

EXHIBIT 1 (A)

In The Matter Of:
CHARLIE THORNTON
v.
FEDEX GROUND PACKAGE SYSTEM

CHARLIE THORNTON
March 15, 2006



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CHARLIE THORNTON
FEDEX GROUND PACKAGE SYSTEM

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<p>IN THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION</p> <p>CIVIL ACTION NO: 2:05-CV-00656-DRB</p> <p>CHARLIE THORNTON, Plaintiff, vs. FEDEX GROUND PACKAGE SYSTEM, INC., Defendant.</p> <p>DEPOSITION OF CHARLIE THORNTON 15TH DAY OF MARCH, 2006</p> <p>TAKEN BEFORE: Gary N. Morgan Registered Professional Reporter and Notary Public</p>	<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Mr. K. Anderson Nelms</p> <p>5 Attorney at Law</p> <p>6 Law Offices of Jay Lewis, LLC</p> <p>7 847 South McDonough Street</p> <p>8 P. O. Box 5059</p> <p>9 Montgomery, Alabama 36104</p> <p>10</p> <p>11 FOR THE DEFENDANT:</p> <p>12 Messrs. Robert K. Spotswood and</p> <p>13 John. R. Parker, Jr.</p> <p>14 Attorneys at Law</p> <p>15 Law Offices of Robert K. Spotswood</p> <p>16 Suite 940</p> <p>17 2100 Third Avenue North</p> <p>18 Birmingham, Alabama 35203</p> <p>19</p> <p>20 OTHERS PRESENT:</p> <p>21 Mr. Kent Gastineau</p> <p>22</p> <p>23</p>
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<p>1 S T I P U L A T I O N</p> <p>2 IT IS STIPULATED AND AGREED,</p> <p>3 by and between the parties, through their</p> <p>4 respective counsel, that the deposition</p> <p>5 of CHARLIE THORNTON may be taken before</p> <p>6 Gary N. Morgan, Commissioner, Registered</p> <p>7 Professional Reporter and Notary Public,</p> <p>8 State at Large;</p> <p>9 That the signature to and</p> <p>10 reading of the deposition by the witness</p> <p>11 is waived, the deposition to have the</p> <p>12 same force and effect as if full</p> <p>13 compliance had been had with all laws and</p> <p>14 rules of Court relating to the taking of</p> <p>15 depositions;</p> <p>16 That it shall not be necessary</p> <p>17 for any objections to be made by counsel</p> <p>18 to any questions, except as to form or</p> <p>19 leading questions, and that counsel for</p> <p>20 the parties may make objections and</p> <p>21 assign grounds at the time of trial, or</p> <p>22 at the time said deposition is offered in</p> <p>23 evidence, or prior thereto.</p>	<p>1 I N D E X</p> <p>2 PAGE:</p> <p>3</p> <p>4</p> <p>5 EXAMINATION BY MR. SPOTSWOOD 6</p> <p>6</p> <p>7</p> <p>8 Exhibit A 48</p> <p>9 Exhibit G 61</p> <p>10 Exhibit B 66</p> <p>11 Exhibit C 72</p> <p>12 Exhibit D 83</p> <p>13 Exhibits E and F 87</p> <p>14 Exhibit O 97</p> <p>15 Exhibit R 107</p> <p>16 Exhibit N 113</p> <p>17 Exhibits S and T 119</p> <p>18 Exhibit U 127</p> <p>19 Exhibit V 132</p> <p>20 Exhibit X 158</p> <p>21 Exhibit Y 159</p> <p>22 Exhibit W 163</p> <p>23 Exhibit L 187</p>

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1	Exhibit Z	192	1 Parker, I represent FedEx Ground in
2	Exhibit H	228	2 connection with the lawsuit that you have
3	Exhibit AA	232	3 filed against it. We're here today for
4	Exhibit BB	233	4 the purpose of taking your deposition.
5	Exhibit CC	233	5 Have you ever had a deposition taken
6	Exhibit DD	234	6 before?
7	Exhibit EE	235	7 A. One other time.
8	Exhibit FF	237	8 Q. Okay. And, so, what's going
9	Exhibit GG	239	9 to happen here, and I'm sure this is
10	Exhibit HH	240	10 familiar with you since you've been
11	Exhibit II	241	11 deposed before, is that I'm going to ask
12	Exhibit JJ	242	12 questions, you're going to give me
13	Exhibit KK	243	13 answers. It makes the process a lot
14	Exhibit LL	244	14 easier if you'll take your time with me
15	Exhibit MM	245	15 and I'll take my time with you, and
16	Exhibit M	246	16 specifically I mean let me finish my
17	Exhibit NN	252	17 question before you give an answer. It's
18			18 also very important for you to answer out
19			19 loud with words rather than with a nod of
20			20 the head or a huh-uh or a uh-huh because
21			21 that's all subject to interpretation, so
22			22 please speak up.
23			23 If at any time during the
		Page 6	Page 8
1	I, Gary N. Morgan, a		1 course of the day today you have any need
2	Registered Professional Reporter of		2 for a break, just let us know that, and
3	Birmingham, Alabama, and a Notary Public		3 we'll do whatever you need to do or take
4	for the State of Alabama at Large, acting		4 a break. If at any time you don't
5	as Commissioner, certify that on this		5 understand any of my questions, it's okay
6	date, as provided by the Federal Rules of		6 for you to say you don't understand the
7	Civil Procedure of the United States		7 question. I want you to understand what
8	District Court, and the foregoing		8 I'm asking you is the point.
9	stipulation of counsel, there came before		9 If, in the course of the
10	me at 847 South McDounough Street,		10 deposition, you think later after you've
11	Montgomery, Alabama, on the 15th day of		11 answered a question that you've got an
12	March, 2006, commencing at 9:33 a.m.,		12 additional answer you want to give, you
13	CHARLIE THORNTON, witness in the above		13 want to clarify something that you said,
14	cause, for oral examination, whereupon		14 it's okay to bring it up later. I'm
15	the following proceedings were had:		15 trying to get a full story, as you'll see
16			16 today, about why we're here and in this
17	CHARLIE THORNTON,		17 litigation, so I want you to feel free
18	being first duly sworn, was examined and		18 to, you know, if you've forgotten about
19	testified as follows:		19 something, to come along later and
20			20 supplement what you said.
21	EXAMINATION BY MR. SPOTSWOOD:		21 Are you on any medications of
22	Q. Mr. Thornton, my name is Bob		22 any kind today?
23	Spotswood, and, together with J. R.		23 A. The only thing I take is

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1 something for hypertension. 2 Q. And what would that be? I 3 take some of those myself. 4 A. It's Uretic I think is the 5 name of it. 6 Q. Okay. 7 A. It's a very -- it's a low 8 blood pressure tablet. 9 Q. Okay. And I'm sitting here 10 looking at you. You look perfectly lucid 11 to me. You're not under the influence of 12 any kind of drugs or alcohol or anything 13 like that that would keep you from 14 answering -- 15 A. That's correct. 16 Q. -- properly and truthfully? 17 And tell us your full name, please, sir. 18 A. Charlie Edward Thornton, Sr. 19 Q. Where do you live, Mr. 20 Thornton? 21 A. 75 Pine Court, Millbrook, 22 Alabama. 23 Q. What county is that located	1 Q. And what was your course of 2 study at the George C. Wallace Community 3 College? 4 A. Electronics. 5 Q. Are you married? 6 A. Yes, I am. 7 Q. What's your wife's name? 8 A. Debbie. 9 Q. How long have you been married 10 to Debbie? 11 A. Eight years. 12 Q. Is she employed? 13 A. Yes, she is. 14 Q. Where does she work? 15 A. State Farm Insurance. She's 16 an agent. 17 Q. What kind of insurance 18 products does she sell? 19 A. Life, health, property and 20 casualty, auto. I guess the whole gamut. 21 Q. And where is her office 22 located? 23 A. It's on the northern bypass
Page 10	Page 12
1 in? 2 A. Elmore. 3 Q. What's your date of birth? 4 A. 2/7/56. 5 Q. What is your place of birth? 6 A. Phoenix, Arizona. 7 Q. How long have you lived in 8 Alabama? 9 A. Since '64. 10 Q. Tell me your educational 11 background. 12 A. High school, one year of 13 college. 14 Q. Where did you go to college? 15 A. Isabella High School. 16 Q. Where is that located? 17 A. Chilton County. 18 Q. Where did you go to college? 19 A. George C. Wallace. That's in 20 Selma, Alabama. 21 Q. That's the community college 22 over there? 23 A. Yes, it is.	1 here in Montgomery. I don't know the 2 exact address. 3 Q. How long has she been a State 4 Farm agent? 5 A. With State Farm a year -- a 6 little over a year. 7 Q. And before she was a State 8 Farm agent, what did she do by way of 9 employment? 10 A. She was in the insurance 11 business. 12 Q. And who did she work for? 13 A. AIG, American General. 14 Q. Yes. What kind of insurance 15 products did she sell for AIG? 16 A. Life and health. 17 Q. And how long had she worked 18 for AIG before she moved over to State 19 Farm? 20 A. I would say a year and a half 21 or so. 22 Q. Okay. And what did she do 23 for employment before AIG?

3 (Pages 9 to 12)

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<p>1 A. She worked for Regions Bank. 2 Q. What was her job with Regions? 3 A. She worked in mortgage 4 finance. I don't know what her title was 5 in mortgage finance. 6 Q. Did she sell mortgages? 7 A. I could not tell you. I do 8 not know. 9 Q. Which location of Regions did 10 she work at? 11 A. Downtown, Montgomery. 12 Q. All right. And how long did 13 she work for Regions? 14 A. 21 years. 15 Q. So, did she retire from 16 Regions then? 17 A. Somewhat, yeah. 18 Q. What was the circumstances of 19 her leaving Regions? 20 A. I had -- I had opened up a -- 21 a business, and she just -- she wanted a 22 break from that, plus our first 23 grandchild was born, and she wanted to</p>	<p>1 structure of it? 2 A. It was a LLC. 3 Q. And who had an interest in 4 American Shield other than you? Your 5 wife, did she have an ownership interest 6 in it apart from, you know, you? 7 A. No. 8 Q. Okay. Did you have any other 9 employees? 10 A. Yes. 11 Q. How many employees did you 12 have? 13 A. Approximately, 10 to 15. 14 Q. When did you open the doors on 15 American Shield? 16 A. I don't actually recall. 17 Q. Can you give me a year? From 18 the sounds of it, it must have been 19 like '90 -- 2002 maybe, if that coincides 20 with your wife's departure from Regions? 21 A. It may have -- 2002, 2000 -- 22 latter part of 2001. 23 Q. Okay. And did you later sell</p>
<p>1 spend time. 2 Q. She basically resigned her 3 job, I guess, at Regions, is that 4 correct? 5 A. Yeah, I would think so, yeah. 6 Q. And what was the business that 7 you had opened? 8 A. It was a security business. 9 Q. What kind of security services 10 did you provide? 11 A. Home -- well, residential and 12 business. 13 Q. What was the name of the 14 company? 15 A. It was American Shield. 16 Q. Is that a sort of a franchise 17 operation or -- 18 A. No, sir. 19 Q. It was your own -- 20 A. Yes. 21 Q. -- company? And American 22 Shield, was it a partnership, a 23 corporation, a LLC? What was the</p>	<p>1 that business? 2 A. No, we dissolved the business. 3 Q. When did you dissolve the 4 business? 5 A. I do not recall the date of 6 that. 7 Q. Do you recall what year it 8 was? 9 A. No, I do not. 10 Q. You don't know if it was 11 in '04, '03 or -- 12 A. Not an accurate date, I surely 13 do not. 14 Q. Okay. What caused you to 15 dissolve the American Shield business? 16 A. It -- we had some problems 17 within the business. It just wasn't 18 profitable. 19 Q. Can you be a little bit more 20 specific about what caused its demise? 21 A. Not really. There was some -- 22 some -- well, there were some situations 23 that it -- it just -- as far as money, as</p>

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1 far as the profitability of the business. 2 Q. Right. 3 A. It just did not -- it just was 4 not profitable, you know, as far as the 5 bottom line, and we just decided it would 6 be more feasible economically to close 7 the business. 8 Q. Did you put it into 9 bankruptcy? 10 A. No, no. 11 Q. Did you pay off all of your 12 creditors? 13 A. Yes, we did. 14 Q. You've been married to Debbie 15 for eight years? 16 A. Yes. 17 Q. Were you married prior to your 18 marriage to Debbie? 19 A. Yes. 20 Q. How many times have you been 21 married total? 22 A. Twice. 23 Q. What is your first wife's	1 A. No. 2 Q. Okay. And you have how many 3 children? 4 A. I have four biological, and I 5 have two stepchildren. 6 Q. And can you tell me the names 7 and approximate ages of the four 8 biological children? 9 A. Charlie, Jr. is 27. I hope I 10 get this right. 11 Q. Oh, good. That's good. Do 12 your best. 13 A. Seth is 24. Andy is 18. 14 Shelby is 14. My stepdaughter, Tammy, 15 she's 32. 16 Q. Yes. 17 A. And my stepson is Justin. 18 He's 23. 19 Q. Where is Charlie living these 20 days, Charlie, Jr.? 21 A. Charlie lives in -- he lives 22 in Chilton County. 23 Q. What's he doing up there?
Page 18	Page 20
1 name? 2 A. Sue -- Sue. 3 Q. And what is her current full 4 name now? 5 A. I do not know. 6 Q. And what was her maiden name? 7 A. Hammond. 8 Q. H-A-M-M-O-N-D? 9 A. Correct. 10 Q. And do you know where she 11 lives? 12 A. Mississippi. 13 Q. Do you know where in 14 Mississippi? 15 A. No, I do not. 16 Q. Do you know if she works? 17 A. I do not. 18 Q. When were you divorced from 19 Sue? What approximate year? 20 A. '94. 21 Q. You mentioned that you gave a 22 deposition previously. Was that in 23 connection with that divorce?	1 A. He does construction. 2 Q. And what about Seth, same 3 question? 4 A. Seth is in the military. 5 Q. Where is he right now? 6 A. Fort Hood, Texas. 7 Q. And Andy, your 18-year-old? 8 A. Andy is home with his mom. 9 Q. In Mississippi? 10 A. Yes. 11 Q. And you don't know where that 12 is? 13 A. I don't recall the name of the 14 town. 15 Q. Do you talk to Andy every now 16 and then? 17 A. Yes, I do. 18 Q. When was the last time you saw 19 Andy? 20 A. Two weeks ago. 21 Q. I take it that was here and 22 not Mississippi, then? 23 A. That's correct.

5 (Pages 17 to 20)

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1 **Q.** And did he drive over here to
2 see you?
3 **A.** Yes.
4 **Q.** What about Shelby, where does
5 she live?
6 **A.** That's a he.
7 **Q.** I'm sorry.
8 **A.** He lives with his mother also.
9 **Q.** And you don't know the town
10 where either of these two children live?
11 **A.** No, sir, I do not.
12 **Q.** Do you have a phone number for
13 their residence where you would call
14 them?
15 **A.** Yes, I do.
16 **Q.** What's that phone number?
17 **A.** I do not recall that number.
18 I don't have it memorized.
19 **Q.** Do you recall the area code?
20 **A.** I'm sorry? What was the
21 question?
22 **Q.** Do you recall the area code
23 where --

1 **MR. NELMS:** To help you out,
2 that would also be Elmore and Autauga
3 Counties. So, you're talking Autauga,
4 Elmore, Montgomery and then everything
5 east of 65 all the way down to the state
6 line in Florida.
7 **MR. SPOTSWOOD:** Yes.
8 **MR. NELMS:** And then 85 all
9 the way out to the Chattahoochee River,
10 and then north of 85 all the way up to
11 Tallapoosa.
12 **Q.** You've got a better
13 understanding of the counties in the
14 Middle District than I do.
15 **MR. NELMS:** Well, it's my
16 district, though.
17 **MR. SPOTSWOOD:** I appreciate
18 it.
19 **A.** I do not. I do not have any
20 relatives.
21 **MR. NELMS:** Brothers, aunts,
22 sisters, brothers.
23 **A.** I have no sisters, no

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1 **A.** 601.
2 **Q.** Is it north Mississippi,
3 central Mississippi, southern
4 Mississippi?
5 **A.** It's in -- around the
6 Hattiesburg area.
7 **Q.** But it's not in the city of
8 Hattiesburg; it's just near Hattiesburg?
9 **A.** Right.
10 **Q.** Do you know where your kids go
11 to high school?
12 **A.** I do not.
13 **Q.** Your case is pending here in
14 the Middle District of Alabama which, if
15 my understanding is correct, basically
16 covers Montgomery County, places east of
17 Montgomery County and east of 65 going
18 south. My question to you is do you have
19 any relatives -- I don't care if they are
20 aunts or uncles or cousins or what have
21 you -- living in Montgomery County or any
22 of those other counties I just mentioned
23 to you geographically?

1 brothers. I only have one living aunt on
2 my dad's side. She lives in Chilton
3 County, but I don't think that -- does
4 it?
5 **MR. NELMS:** Yeah, Chilton
6 County is part too.
7 **A.** All right. Well, I have one
8 aunt.
9 **Q.** What's her name?
10 **A.** Beatrice Cagle.
11 **Q.** How do you spell that?
12 **A.** B-E-A-T-R-I-C-E.
13 **Q.** It's the Cagle part that I'm
14 having trouble with.
15 **A.** Oh, C-A-G-L-E, I assume.
16 **MR. NELMS:** I'm one quarter
17 Cagle.
18 **A.** All right.
19 **MR. NELMS:** That's how you
20 spell it.
21 **A.** Thank you.
22 **MR. NELMS:** My maternal
23 grandmother.

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1	A. Really.	1 A. She's not working at this time
2	Q. How about your spouse, does	2 because the -- her kids are small.
3	Debbie have any relatives in these areas	3 Q. Okay.
4	we've been talking about?	4 A. And she's home with them.
5	A. No. Her relatives are in	5 Q. Right. And how about Justin,
6	Tallahassee, Florida. Other than my	6 is he married?
7	step -- stepchildren.	7 A. No.
8	Q. Right. Right. And Justin,	8 Q. What is Justin doing?
9	what is Justin's last name?	9 A. He works in the State Farm
10	A. Seithalil.	10 office where my wife works.
11	Q. How do you spell that?	11 Q. Okay. Just out of curiosity,
12	A. I have not -- I -- let's see.	12 you know the State Farm offices, do they
13	Let me look.	13 have a defined geographic area that they
14	MR. NELMS: You already have a	14 serve, or do they have an exclusive
15	copy of his driver's license, right?	15 territory, or are they out there
16	MR. SPOTSWOOD: I think I do,	16 competing with each other, those various
17	yes.	17 State Farm offices?
18	MR. PARKER: At least the	18 A. I really -- I can't answer
19	front of the driver's license we do have.	19 that. I do not know.
20	A. It's S-E-I-T-H-A-L-I-L.	20 Q. Okay.
21	Q. And your 32-year-old, I wrote	21 A. I don't know.
22	it down, but I'm having a hard time	22 Q. But she's on the bypass, you
23	reading what I wrote down. What is --	23 say?
	Page 26	
1	MR. PARKER: I didn't get it.	1 A. She's on the northern bypass.
2	Q. -- your 32-year-old's name?	2 The agent's name that owns it is Willie
3	A. Lewis -- oh, first name?	3 Durham. I do not know the address.
4	Q. Yeah.	4 Q. Okay. Thank you. Are you
5	A. Tammy.	5 attending church at this time?
6	Q. So, it's Tammy Lewis?	6 A. Yes, I am.
7	A. Yes.	7 Q. And where do you attend
8	Q. And what is Tammy -- is Tammy	8 church?
9	married?	9 A. Camellia Baptist Church.
10	A. Yes, she is.	10 Q. Where is that located?
11	Q. What's her husband's name?	11 A. In Prattville.
12	A. Steve.	12 Q. And what's the name of the
13	Q. And where do Steve and Tammy	13 pastor there?
14	live?	14 A. Glenn Brock.
15	A. They live in Millbrook.	15 Q. What's your involvement there?
16	Q. Okay. What do they do for	16 A. As much as possible.
17	employment up there?	17 Q. What do you do there?
18	A. Steve is a fireman with the	18 A. Well, I'm just a -- I'm a
19	Montgomery Fire Department.	19 member there.
20	Q. Yes.	20 Q. Right. But, obviously, based
21	A. And Tammy is a pediatric	21 on your prior answer, you do other things
22	nurse.	22 and you contribute time, I take it, to
23	Q. Does she work in Montgomery?	23 other activities. That's what I'm trying

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1	to --	1 A. Single level.
2	A. Sure. It's just according to	2 Q. And it's a -- it's not a
3	what activities are within the church.	3 manufactured home?
4	I'm not a Sunday School teacher or	4 A. No, sir.
5	anything like that.	5 Q. It's brick and mortar?
6	Q. Do you spend time there during	6 A. Right.
7	the week on various church-related	7 Q. Do you have any estimate of
8	things?	8 its present value?
9	A. We do.	9 A. No, sir, I do not, no.
10	Q. How many hours a week would	10 Q. I'm not familiar with the
11	you spend at the church-related	11 street address. Where are you located?
12	activities?	12 Are you in Wetumpka, are you --
13	A. Well, I don't -- I really	13 A. No, sir. We're in the city of
14	don't know how many hours per week.	14 Millbrook.
15	Q. More than 10?	15 Q. Okay. And how long have you
16	A. Probably at least 10 to 15.	16 owned your home there? Actually how long
17	Q. Are you involved in any other	17 have you lived there is what I meant to
18	community activities outside of the	18 ask?
19	church?	19 A. I've been there eight years.
20	A. No, not really unless it's	20 Q. Do you own any rental
21	something to do with my -- my grandson's	21 properties of any kind?
22	playing sports, you know, when that's	22 A. I own my father's home that
23	in -- in session.	23 was deeded over to me at his death.
	Page 30	Page 32
1	Q. Right. Have you ever gone by	1 Q. Where is that located?
2	any name other than Charlie Thornton?	2 A. That's in Chilton County.
3	A. No, sir.	3 Q. And are you the only owner?
4	Q. I want to quickly get a handle	4 A. Yes, sir.
5	on what property and investments you own	5 Q. Do you have an address for
6	at the present time. Do you own your	6 that?
7	home?	7 A. 2325 County Road 359,
8	A. Yes, I do.	8 Maplesville.
9	Q. And you gave me the address of	9 Q. And what does that property
10	that, I think, if I remember correctly?	10 consist of?
11	A. Yes, sir.	11 A. A home and acreage.
12	Q. And is your house subject to a	12 Q. How many acres?
13	mortgage at this time?	13 A. Total is seven -- seven acres
14	A. No, sir.	14 around about.
15	Q. All right. And could you	15 Q. And what's the size of the
16	describe your home for me?	16 home?
17	A. I really don't understand the	17 A. I do not know the square
18	question.	18 footage.
19	Q. I mean, is it a three bedroom,	19 Q. Give me bedrooms, just a rough
20	split level, six bedroom, whatever?	20 estimate.
21	A. Okay. It's a four-bedroom on	21 A. It's a four-bedroom.
22	a slab.	22 Q. Is it rented at the moment?
23	Q. Okay.	23 A. It is leased with an option to

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1 buy.

2 Q. At what price?

3 A. She's making the mortgage
4 payments on it. Whatever the mortgage
5 is, no extra.6 Q. Do you remember roughly what
7 that is?

8 A. Four -- 458 a month.

9 Q. And you don't remember,
10 though, what the purchase price on the
11 seven acres and the house would be?12 A. I don't understand what you
13 mean by purchase price.14 Q. Well, if she's got the option
15 to buy --16 A. It will be the -- whatever the
17 amount is owed.18 Q. That's what I'm asking you,
19 what's the amount owed?20 A. Oh, okay. Oh, the amount
21 owed, 50 -- 57, 58 thousand.22 Q. And when did you inherit the
23 property?1 got ahead of myself here. Do you have
2 any interest at present in any business
3 of any kind?

4 A. No, sir.

5 Q. Are you receiving any
6 annuities or any payments on annuities or
7 pension or a disability policy or
8 anything like that?

9 A. No, sir.

10 Q. You mentioned earlier that you
11 had been deposed once before. Can you
12 tell me what that was in connection with?13 A. It had to do with a -- with a
14 friend -- I don't even really recall.
15 There was a friend involved in selling a
16 security system to a homeowner, and I was
17 present when the transaction took place.
18 And unknowing to the individual, this
19 individual was under contract with
20 another company, and he did not disclose
21 that information to my friend. And
22 they -- when they called me in, they just
23 wanted to know how the transaction went

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1 A. At the time of my father's
2 death.3 Q. Right. Which would have been
4 when?5 A. Two years -- well, Daddy
6 passed away in June will be two years,
7 this coming June.

8 Q. Okay. June of '04.

9 MR. NELMS: Is that correct,
10 he died in June of '04?11 A. Yeah, I think that's pretty
12 accurate.13 Q. Do you own any other real
14 estate?

15 A. No.

16 Q. Do you have any other -- apart
17 from your property interests that you've
18 described, do you have a portfolio of
19 stocks or bonds, a retirement fund or
20 anything like that?

21 A. No.

22 Q. Apart from this case, have you
23 been involved in any -- let me stop. I

1 and what I observed.

2 Q. So, you were just a witness to
3 this dispute, I guess?

4 A. Yes, sir, I guess.

5 Q. And what was the friend's
6 name?

7 A. David Murabito.

8 Q. How do I spell?

9 A. M-U-R-A-B-I-T-O.

10 Q. And do you know -- remember
11 the name of the customer in question?

12 A. No, sir, I don't.

13 Q. But had David been personally
14 sued in connection with the transaction?

15 A. I do not know.

16 Q. And why were you with him in
17 connection with the installation? What
18 brought you there?19 A. Well, it wasn't the
20 installation. It was the -- the sale of
21 the -- of the equipment. I just happened
22 to be with him that day, and we -- it --
23 he had an appointment to go to the home,

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1 and I went with him to the home.

2 Q. Was this at a time when you
3 had your own --

4 A. No, sir.

5 Q. -- company we talked about?

6 When did this all take place?

7 A. I do not recall.

8 Q. Ancient history, five years
9 ago, ten years ago?

10 A. It's been probably four --

11 Q. Okay.

12 A. -- years or more.

13 Q. Have you ever been named as a
14 defendant in a lawsuit?

15 A. No.

16 Q. Have you ever sued anybody
17 other than FedEx in this case? In
18 other -- you can forget about your
19 divorce proceeding.

20 A. Right.

21 Q. I know that was a legal
22 proceeding.

23 A. I don't understand what you

1 Q. What was the nature of the
2 dispute there?3 A. I had a back injury, and I
4 had -- it had to do with my workmen's
5 comp benefits.

6 Q. Did you --

7 A. And --

8 Q. Go ahead.

9 A. Getting disability on my
10 workmen's comp -- or, you know, to
11 determine the amount of workmen's comp.12 Q. Do you remember whether or not
13 you did get some sort of a permanent,
14 partial disability rating or finding in
15 connection with that?16 A. I -- I did get a percentage.
17 I don't even recall what that percentage
18 actually was. I mean, it -- you know,
19 what they did -- I think it's just --
20 just the way that the system is. I mean,
21 they did award a portion of disability.22 Q. Okay. Do you remember or can
23 you recall what the size of the check was

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1 mean by sued.

2 Q. What you did here, you filed a
3 piece of paper in court and claimed
4 compensation from somebody for whatever
5 it is you think they did that caused you
6 harm or injury.7 A. The only other -- the only
8 other case I had was a workmen's comp
9 case, and that's been years ago. I don't
10 know if that's suing.

11 Q. Yes.

12 A. But --

13 Q. Who was the employer involved
14 in that case?

15 A. It was Brockway Glass Company.

16 Q. And where were they located?

17 A. Here in Montgomery.

18 Q. And do you remember
19 approximately when that happened?20 A. Approximately, not
21 accurately --

22 Q. Yes.

23 A. -- '79.

1 that you received or if you received just
2 a series of checks over a period of time?3 A. Well, I received workmen's
4 comp checks --

5 Q. For a while?

6 A. -- when I was out of work.

7 Q. Right.

8 A. And then I think the
9 settlement -- I don't recall the exact
10 amount --

11 Q. Okay.

12 A. -- of what the check was.

13 Q. Can you give me a ballpark?

14 A. To be truthful --

15 Q. Yes.

16 A. -- I really don't -- I really
17 don't remember.

18 Q. Okay.

19 A. I really do not remember.

20 Q. Any other legal proceedings of
21 any kind that you can recall being
22 involved with?

23 A. No, sir.

10 (Pages 37 to 40)

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1 **Q.** And you've never sought any
2 kind of a disability --

3 **A.** No, sir.

4 **Q.** -- from any entity, state or
5 federal, Social Security?

6 **A.** No, sir.

7 **Q.** How's your health right now?

8 **A.** Other than the hypertension, I
9 feel like it's pretty good.

10 **Q.** All right. Do you feel like
11 the hypertension is under control with
12 the drugs you're taking?

13 **A.** Well, not with just drugs,
14 but, you know -- yes, I feel like it's
15 pretty much under control.

16 **Q.** Do you have a cardiologist who
17 you see every six months or so?

18 **A.** No, I do not.

19 **Q.** Who prescribes your medication
20 for hypertension?

21 **A.** Dr. Marla Wool.

22 **Q.** How do you spell the last
23 name?

1 basically over about a five-year period.
2 I'm going to do that, I hope, with the
3 help of the tax return information that
4 you've given me, and we have some
5 exhibits here on that, so that's where
6 we're going to start. And I'd like to
7 start with -- with 2006, and, of course,
8 I know we don't have any tax return
9 information so far, but where are you
10 working right now?

11 **A.** UniFirst Corporation.

12 **Q.** That's U-N-I-F-I-R-S-T?

13 **A.** That's correct.

14 **Q.** And where is it located?

15 **A.** Branch office is in Millbrook.

16 **Q.** And what is the nature of the
17 business?

18 **A.** Uniform supply.

19 **Q.** What is your job with
20 Uniform -- UniFirst, rather?

21 **A.** Territory manager.

22 **Q.** And tell me what you do as a
23 territory manager.

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1 **A.** W-O-O-L.

2 **Q.** And where is Marla located?

3 **A.** She is located in Millbrook.

4 **Q.** And she's just a regular care
5 physician?

6 **A.** Yes.

7 **Q.** Apart from Marla --

8 (Off-the-record discussion.)

9 **Q.** (BY MR. SPOTSWOOD:) Apart
10 from Marla, are you under the care of any
11 other medical professional, whether it's
12 a psychologist, a psychiatrist --

13 **A.** No.

14 **Q.** -- anybody else?

15 **A.** No, sir.

16 (Off-the-record discussion.)

17 **Q.** (BY MR. SPOTSWOOD:) Yeah, let
18 me just tell you where I'm going here to
19 kind of help bring things along, Mr.
20 Thornton. What I want to do now is move
21 to your employment history really going
22 both from basically the present backwards
23 to find out where you've actually worked

1 **A.** I manage the territory that --
2 protect a territory and, also, I sell in
3 that territory.

4 **Q.** Do you have drivers and others
5 that report to you as the manager?

6 **A.** No.

7 **Q.** Well, how -- what do you do on
8 a regular basis is what I'm trying to get
9 to, what are your regular job functions?

10 **A.** It's customer service
11 basically. I have customers within that
12 territory that I just maintain, manage,
13 make sure everything is going smoothly
14 with their deliveries and stuff like
15 that, and then I report directly to a
16 branch manager.

17 **Q.** And, so, there is somebody
18 riding around in a truck that picks up
19 and delivers uniforms --

20 **A.** Oh, sure.

21 **Q.** -- to various entities, and
22 that's really the nature of the business,
23 correct?

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1 **A.** Yes.

2 **Q.** So, you are making sure that
3 the service is good and that they don't
4 have any complaints and that, you know,
5 they are paying their bills and you're
6 doing what you are supposed to be doing?

7 **A.** My main function is selling.

8 **Q.** And, so, how do you go about
9 doing that? Are you soliciting people,
10 cold calling them?

11 **A.** Several different ways.

12 **Q.** Okay. Well, tell me what they
13 are.

14 **A.** I do cold calling, solicit,
15 referrals.

16 **Q.** And are you paid on a
17 commission basis?

18 **A.** Commission plus salary.

19 **Q.** And what is -- tell me the
20 exact structure of your compensation.

21 **A.** What do you mean by that?

22 **Q.** What -- well, let's begin with
23 this: When did you start working at

1 **A.** Sure. Yes.

2 **Q.** Can you tell me what your
3 compensation has averaged since you began
4 working eight weeks ago on a weekly
5 basis?

6 **A.** Six hundred a week. I've just
7 got into the commission phase of it.

8 **Q.** So, you're just now working --
9 **A.** Basically in training.

10 Getting out of training. Not actually
11 getting out of training. I've got into
12 the selling mode. We were in a training
13 mode.

14 **Q.** So, beginning what, in April
15 you should start seeing some commission
16 checks, is that what you're saying, maybe
17 next month?

18 **A.** Possibly, yeah.

19 **Q.** Maybe this month too?

20 **A.** Oh, I'm not -- no, it will not
21 be this month.

22 **Q.** Who is your immediate
23 supervisor there?

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1 UniFirst?

2 **A.** It was approximately eight
3 weeks ago.

4 **Q.** What is your base salary?

5 **A.** My base salary is six -- six
6 hundred a week.

7 **Q.** And what is your -- how is
8 your commission computed?

9 **A.** It's computed several
10 different ways. There's no set way of
11 computing commissions. It's according --
12 it's based on what you sell, the price
13 you sell it for, length of time for the
14 agreement.

15 **Q.** But you have an agreement --
16 you have it written down what your
17 commission arrangement is, I take it?

18 **A.** I have a structure according
19 to the -- whatever your sale is.

20 **Q.** Okay. But you can figure out,
21 I take it, when you get a paycheck
22 whether or not your paycheck has been
23 properly computed?

1 **A.** Acting branch manager is Dan
2 Cohen.

3 **Q.** Where is Mr. Cohen located?

4 **A.** Millbrook.

5 **Q.** Let me ask you to have a look
6 at Defendant's Exhibit A.

7 (Whereupon, Defendant's
8 Exhibit A was marked for
9 identification.)

10 MR. NELMS: Have you got a
11 copy for me? Or do you want me to get
12 my --

13 MR. SPOTSWOOD: Yeah. Let him
14 look at that, if you don't mind.

15 **Q.** (BY MR. SPOTSWOOD:) What I
16 want to do, first of all, is make sure I
17 have everybody you worked for in 2005,
18 and I show that you worked at True Green
19 Limited is one of the entities reflected
20 on your W-2 for 2005, and then I've
21 got -- frankly, I've got another one here
22 that I can't read. This is -- this is
23 reflecting wages of \$720. Do you know

12 (Pages 45 to 48)

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1 who that was? I can't read this. It
2 shows an Overland Park, Kansas address.
3 Do you remember who that was?

4 A. No, sir, I don't.

5 Q. And, then, I show a THD At
6 Home Services.

7 A. Yes.

8 Q. And then I show some
9 compensation from FedEx while you were in
10 the training mode. All right?

11 A. Yes.

12 Q. Apart from the income
13 reflected on these four W-2 forms, did
14 you have any other income in 2005?

15 A. No, sir.

16 Q. Now, let's start with --

17 A. Okay. I know who this is.

18 Q. Okay. Who is that?

19 A. That was with DHL.

20 Q. DHL?

21 A. DHL.

22 Q. A delivery service?

23 A. Yes. You said 2005.

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1 company.

2 Q. Did you quit that job, or were
3 you terminated from it, what happened?

4 A. I turned in my -- a notice.

5 Q. Where was their office
6 located?

7 A. Here in Montgomery.

8 Q. Can you help me out a little
9 bit more than that?

10 A. It's in the north -- it's off
11 the northern bypass.

12 Q. It would be listed in the
13 Yellow Pages as True Green Limited?

14 A. No, sir. It's True Green
15 ChemLawn.

16 Q. Okay. And what was your next
17 employer in 2005 other than your training
18 time at FedEx?

19 A. That would have been with DHL.

20 Q. All right. Which location for
21 DHL did you --

22 A. It's here in Montgomery.

23 Q. Do you recall roughly where

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1 Q. Right.

2 A. Right?

3 Q. Yes, sir. Let's talk about --
4 why don't we do these in order. Which
5 one were you first employed by in 2005?

6 A. That would have been True
7 Green.

8 Q. All right. What did you do
9 for True Green?

10 A. I was a sales rep.

11 Q. What was the nature of their
12 business?

13 A. They do fertilizations,
14 spraying of lawns, insect control.

15 Q. And who was your supervisor
16 there?

17 A. I do not even recall his name.
18 I don't know.

19 Q. How long did you work there?

20 A. It was a very short period of
21 time. That was before I -- well,
22 actually it was a very short period of
23 time, and then I went on with the FedEx

1 the office is located?

2 A. It's off the northern bypass
3 also. I don't -- I really don't recall
4 the address.

5 Q. What kind of facility was it?

6 A. It's a terminal, delivery
7 terminal.

8 Q. Who was your supervisor there?

9 A. I do not recall his name
10 either.

11 Q. Was it a -- can you give me a
12 description of him?

13 A. A description of the
14 individual?

15 Q. Yes. You know, skin color,
16 hair color.

17 A. He was a black guy.

18 Q. Approximate age?

19 A. Oh, I have no idea. 20s, 30s.

20 Q. All right. And what did you
21 do for DHL?

22 A. I delivered packages.

23 Q. Were you a -- did you have a

13 (Pages 49 to 52)

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1 particular route?

2 A. Yes, I did.

3 Q. Where was your route?

4 A. Elmore County.

5 Q. Were you an employee or an
6 independent contractor?

7 A. I was an employee.

8 Q. How long did you work for DHL?

9 A. I don't recall that length of
10 time.

11 Q. A couple of weeks, a month?

12 A. It was probably around three
13 weeks, looking at the pay.14 Q. And do you have any
15 recollection of what period of time it
16 was, whether it was in the summer or was
17 it in --

18 A. It was in the summer.

19 Q. And what happened with respect
20 to that job? Why aren't you still
21 working at DHL?22 A. Well, at the time I was also
23 trying to get on with -- At-Home Services1 conditions and the compensation package
2 basically?3 A. And I had the opportunity to
4 interview with Home Depot. Of course,
5 the pay was -- it was tough, from seven
6 to seven at night and every weekend, you
7 know.8 Q. You were working on Saturdays
9 and Sundays?

10 A. Not Sunday.

11 Q. But you were working Saturday?

12 A. Yes.

13 Q. How many hours on Saturday?

14 A. Well, that would vary because
15 you had packages to deliver, and you had
16 to complete your -- your route for the
17 day. And during the week it was not like
18 from seven to seven. You worked until
19 you completed your -- your route for that
20 day.21 Q. And you don't remember your
22 supervisor's name over there?

23 A. Honestly, no.

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1 is actually Home Depot, but it was
2 working 60, 70 hours a week, and the pay
3 was -- it was nothing. \$400 a week at 60
4 to 70 hours a week. No overtime.

5 Q. What was your hourly rate?

6 A. I do not even know because
7 they -- they started us -- started me at
8 400. They started everybody else at 375.
9 The only reason why they started me at
10 four hundred was because I had went
11 through the training at FedEx.12 Q. And you were working a minimum
13 of 60 hours a week without any additional
14 compensation?

15 A. That's exactly right.

16 Q. You were a salaried employee,
17 is that what you're saying?

18 A. That's exactly right.

19 MR. NELMS: Off the record.
20 (Off-the-record discussion.)21 Q. (BY MR. SPOTSWOOD:) So, in
22 any event, Mr. Thornton, you quit the job
23 because you didn't like the working1 Q. Okay. And so, you resigned
2 that job?

3 A. Yes.

4 Q. And, then, did you have a job
5 at the time you resigned with Home Depot?

6 A. What was the question again?

7 Q. At the time you resigned from
8 DHL, did you have a job with anybody
9 else?10 A. I -- yes, I had the job with
11 Home Depot.12 Q. And that's, I think, listed on
13 the W-2 form, Exhibit A, as THD At-Home
14 Services?15 A. Right, the Home Depot At-Home
16 Services.17 Q. All right. And what was your
18 job there?19 A. Sales, selling roofing, siding
20 and window products to homeowners.21 Q. What location did you work out
22 of?

23 A. Montgomery.

14 (Pages 53 to 56)

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1 **Q.** Were you actually calling on
2 people at their homes, or was this within
3 a Home Depot store?

4 **A.** No, this was actually running
5 appointments that were set up through the
6 store. I didn't have anything to do with
7 the store. Appointments were set up,
8 sent over to us by e-mail, and then we
9 went to the home, met with the homeowner.

10 **Q.** And you would then what,
11 decide what they needed and sign them up
12 on a contract to have the roofing, siding
13 or window products purchased and
14 installed?

15 **A.** That's correct.

16 **Q.** And how were you compensated
17 for that?

18 **A.** Strictly commission.

19 **Q.** What was your commission rate?

20 **A.** It varied with the product.

21 From eight to ten percent.

22 **Q.** We showed that you received,
23 according to Exhibit A, your -- your W-2

1 way to say, well, I had two appointments
2 each day.

3 **Q.** Well, it seems like -- and
4 your answer may have just explained it.
5 It seems a very modest amount of
6 compensation running over a three-month
7 period of time?

8 **A.** Well, exactly right. As far
9 as being competitive in the market, Home
10 Depot in this area was not very
11 competitive at all. When it comes to the
12 roofing products, in this area there's --
13 to give you an example, there's a hundred
14 and twenty roofing companies in the city
15 of Montgomery, and Home Depot, normally
16 their prices were twice as much as Joe's
17 Roofing out here, to give you an example.
18 So, they were not competitive at all.

19 And -- but I mean, you know, there was a
20 job to be done, and you were to run your
21 appointments. There was no compensation
22 for mileage. It was straight commission.

23 **Q.** During this period -- it

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1 earnings \$2689?

2 **A.** Right.

3 **Q.** How long did you work there?

4 **A.** I worked with Home Depot up
5 until the time I took the job with
6 UniFirst.

7 **Q.** So, when did you begin with
8 Home Depot, sometime in the summer?

9 **A.** Yes.

10 **Q.** How many hours a week were you
11 working at the Home Depot?

12 **A.** That would vary, and that was
13 one of the issues with Home Depot. Of
14 course, you had appointments set up
15 daily. Sometimes you may have one
16 appointment. You may have two. Some
17 weeks you only had maybe two appointments
18 in a whole week. That was the -- that
19 was the big issue that I had with those
20 guys. But as far as hours, an
21 appointment would normally take two,
22 possibly three hours, but the
23 appointments were so sporadic there's no

1 basically sounds like you were working
2 part-time. During this period were you
3 working anywhere else?

4 **A.** No.

5 **Q.** Were you aware when you
6 accepted the position at Home Depot and
7 resigned from your job at DHL that there
8 was going to be no guarantee of any
9 particular volume of appointments in any
10 particular week?

11 **A.** I knew that there would be
12 appointments, but I did not know how many
13 appointments.

14 **Q.** When did you start looking for
15 something else, other than Home Depot?

16 **A.** I was continually looking for
17 something with a better income from the
18 get-go.

19 **Q.** I think -- where is that
20 printout?

21 MR. PARKER: Look at the
22 exhibit list. It's Exhibit G.

23 MR. NELMS: While we're off

15 (Pages 57 to 60)

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1 the record.

2 MR. SPOTSWOOD: Yeah.
3 (Off-the-record discussion.)
4 (Said deposition was in recess
5 at 10:32 a.m. until 10:38
6 a.m., after which the
7 following occurred:)8 Q. (BY MR. SPOTSWOOD:) Have a
9 look at Exhibit G from the stack over
10 there.11 (Whereupon, Defendant's
12 Exhibit G was marked for
13 identification.)14 Q. This was the document I think
15 that was produced to us in response to
16 our request for what other jobs you were
17 looking for during this period of time,
18 and what I want to know is what exactly
19 did you make application for from this
20 list that's shown here on Defendant's
21 Exhibit G?22 A. Oh, there's -- there's no
23 telling. There's no way I can tell you

1 Q. Yes.

2 A. I never realized that I would
3 need this until I got the information
4 from Andy, and that's when I went on and
5 tried to catch it and print it off -- off
6 the Internet.7 Q. And, so, what you're saying,
8 if I look down on the bottom here to the
9 location on the Internet, it says, among
10 other things, careerbuilder.com, job
11 seeker jobs, my saved jobs. So, on
12 jobs -- on this careerbuilder.com, did
13 you have a list of saved jobs that you
14 were trying to print this from?15 A. That -- this is the saved jobs
16 list.

17 Q. Okay.

18 A. The ones that I applied to.

19 Q. And are you saying -- it says
20 1-18 of 18, so are -- am I missing
21 something here? Is this just page one of
22 18 pages worth of jobs that you
23 actually --

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1 that. There were several I made
2 application for. Everything that I
3 clicked on on this right here I made
4 application. I sent a resume to.5 Q. But you're not saying you --
6 you -- I mean, what we have here is a
7 website that says careerbuilder.com?

8 A. Exactly right.

9 Q. And it's got a bunch of job
10 titles here, and everything from sales
11 manager to field service representative
12 to driver, there are 18 pages, according
13 to this thing, and at least on this
14 particular one, this is 1-18 of 18. And
15 I guess what I'm asking you is I assume
16 you didn't apply for all of these jobs.
17 Do you know what you applied for?18 A. Yes, I did. I sent resumes to
19 all of these jobs. Those are the ones
20 that were -- it showed that I applied.21 A. As a matter of fact, there's more than
22 that because if you'll see at the top, it
23 says deleted after two months.

1 A. That's one of 18 of 18.

2 Q. Oh, I see, of the actual jobs
3 listed above. All right.4 A. This is all that I could pull
5 off, and then if you go to -- on the back
6 page there's one monster.com. Those are
7 the ones there that I sent resumes to.
8 But there were several, several more
9 because I -- like I say, it deleted them
10 off after two months.11 Q. So, you applied -- let's just
12 look over here on the last -- the second
13 to the last page, you applied for a
14 restaurant manager job?

15 A. I surely did.

16 Q. And you applied as a
17 collector?

18 A. Yes.

19 Q. You applied as a benefits
20 recruiter?

21 A. Yes.

22 Q. Had you ever worked in the
23 restaurant business?

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1 **A.** No. But I felt like I had
2 management experience.

3 **Q.** And can you tell us what
4 companies you were making applications
5 for? For example, on 1/21/2006, it says
6 managers and assistant managers. Do you
7 remember who that was?

8 **A.** No, I do not.

9 **Q.** It says apply online, question
10 mark. What does that mean?

11 **A.** I have no idea. That's their
12 website. That's -- I didn't -- these
13 are -- but I know this: These are the
14 ones that I applied to.

15 **Q.** Okay. But you were not able
16 to, when you printed this out, to also
17 print out what job it was; you couldn't
18 click on the job and find out what job it
19 was, who you were actually applying to?
20 Surely there's some more detail here.

21 **A.** I knew I had to have a list of
22 where I had applied.

23 **Q.** Yes.

1 **1** Exhibit B the tax return you and your
2 wife filed for the tax year 2004 with the
3 federal government?

4 **A.** Yes.

5 **Q.** And does it accurately reflect
6 all of the income that you and she
7 received that year?

8 **A.** Yes.

9 **Q.** It reflects that you received
10 some \$28,358 in wages from American
11 General Life and Accident Insurance
12 Company, on page --

13 **A.** Correct.

14 **Q.** -- two. What were you doing
15 for American General?

16 **A.** I was an agent.

17 **Q.** What kind of products were you
18 selling?

19 **A.** Life and health.

20 **Q.** And how long did you have that
21 job?

22 **A.** It was 14 months.

23 **Q.** And your wife had a similar

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1 **A.** This is what I went to and
2 printed off.

3 **Q.** Okay.

4 **A.** Whether I could have went in
5 and printed off each, I don't know if I
6 could have done that or not.

7 **Q.** All right. I want to go to
8 your 2004 tax return, which, along with
9 the W-2 forms, is marked as Exhibit B.
10 (Whereupon, Defendant's
11 Exhibit B was marked for
12 identification.)

13 **A.** Can I ask you a question
14 outside?

15 MR. SPOTSWOOD: Sure. Go
16 ahead.

17 **A.** If you don't mind, I'd
18 appreciate it.

19 (Said deposition was in recess
20 at 10:44 a.m. until 10:48
21 a.m., after which the
22 following occurred:)

23 **Q.** (BY MR. SPOTSWOOD:) Is

1 level of income from the same company.
2 What was she doing?

3 **A.** She was an agent.

4 **Q.** And where was your office
5 located?

6 **A.** In Montgomery.

7 **Q.** Did you guys work out of your
8 home, or were you working from an office?

9 **A.** No, we worked out of an
10 office.

11 **Q.** Do you remember what the
12 address was of that office?

13 **A.** No, sir. It was on the
14 Atlanta Highway.

15 **Q.** So, if I'm not mistaken here,
16 from the looks of things, you worked all
17 of 2004 for American General?

18 **A.** Yes.

19 **Q.** And why did you -- when did
20 you terminate your employment at American
21 General?

22 **A.** It would have been December of
23 2004.

17 (Pages 65 to 68)

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1 **Q.** And why did you decide to
2 leave that job?
3 **A.** The actual reason was because
4 of chargebacks, people dropping their
5 insurance and them charging me back for
6 the commissions that they had already
7 paid, and that was -- that's the reason.

8 **Q.** If I understand the way that
9 works, and please correct me if I'm
10 wrong, the chargeback, the company had a
11 policy that allowed them to come back and
12 deduct from your other commission checks
13 that you were earning certain commissions
14 that you had already been credited when
15 people canceled a policy within a period
16 after the sale?

17 **A.** That's correct.

18 **Q.** And that was a policy that you
19 didn't care for and didn't think was
20 appropriate?

21 **A.** I don't understand your
22 question.

23 **Q.** What caused you -- what was

1 **A.** Right.
2 **Q.** And what were you --
3 **A.** I was still a licensed agent
4 -- agent at the time.

5 **Q.** And what did you then look
6 for?

7 **A.** I went to work with True
8 Green. As a matter of fact, they lost
9 several agents at the end of 2004 because
10 of the same problem.

11 **Q.** Who owned the agency where you
12 worked?

13 **A.** It was company owned.

14 **Q.** Who was your immediate report,
15 direct supervisor?

16 **A.** Lee Crawford.

17 **Q.** Is he still there, as far as
18 you know?

19 **A.** I do -- I don't know. I
20 really don't know. I haven't -- I don't
21 know.

22 **Q.** Did your wife, Deborah, also
23 terminate her employment there?

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1 the problem you had with that policy?
2 **A.** I didn't have a -- well, it --
3 you're talking about the company policy.
4 Okay. When you said policy, I'm sorry, I
5 thought you were talking about the
6 insurance policy.

7 It was the amount that hit.
8 It had actually -- over a short period of
9 time going into the latter months of
10 2004, there was so much business that
11 dropped off the books that my pool that I
12 drew my income from was just about
13 nothing, so my income had dropped
14 tremendously.

15 **Q.** And that was because there was
16 poor retention, is that the terminology?

17 **A.** A very poor retention not --
18 throughout the company, business
19 retention.

20 **Q.** So, you thought that was not a
21 good economic deal for you and you quit?

22 **A.** It was not, no.

23 **Q.** And looked for something else?

1 **A.** Yes, she did. Not at the same
2 time.

3 **Q.** It looks like she also worked
4 at least for a period of time with
5 Liberty National. What was she doing
6 there?

7 **A.** She was an agent.

8 **Q.** Was that before or after her
9 time with American General?

10 **A.** That was before. As a matter
11 of fact, she took the job -- I was
12 offered the job at State Farm, but at the
13 time I was with -- going through FedEx,
14 and I declined the job and recommended
15 her -- her the job with State Farm.

16 **Q.** And she took that job?

17 **A.** And she took that job.

18 **Q.** Let's have a look at
19 Defendant's Exhibit C, which is, I
20 believe, your tax return for 2003.
21 (Whereupon, Defendant's
22 Exhibit C was marked for
23 identification.)

18 (Pages 69 to 72)

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1 **Q.** Let me ask you to confirm that
 2 Exhibit C is your federal income tax
 3 return for the calendar year 2003 plus
 4 the W-2 forms reflecting income you and
 5 your wife received that year?

6 **A.** Yes, sir.

7 **Q.** It looks to me from this tax
 8 return that you and your wife reported a
 9 total of \$25,884 in wages and salaries
 10 for that year, is that correct?

11 **A.** Yes, sir.

12 **Q.** And is that -- is that, in
 13 fact, the total income that you and she
 14 received for that year?

15 **A.** Yes, sir.

16 **Q.** I may be missing something
 17 because it appears that I do not have W-2
 18 forms that add up to all that much money.

19 **MR. PARKER:** I think he may
 20 have had self-employment income.

21 **Q.** Is that correct? Did you have
 22 some self-employment income this year,
 23 2003?

1 was T's next to them. And I said, well,
 2 that's not right. They didn't get tips.

3 Taxpayer, maybe, I don't know, spouse --

4 **Q.** That's what I thought it might
 5 be, spouse and then taxpayer. Did your
 6 wife work that year at J. B. Hunt --

7 **A.** No.

8 **Q.** -- or American General Life?

9 **A.** No, that was me.

10 **Q.** I think that's what that
 11 probably means then.

12 Would it be your recollection
 13 that in 2003 your wife did, in fact, earn
 14 the majority of the income from Liberty
 15 National, that she worked there a lot
 16 longer than you did?

17 **A.** She -- yes, she did work there
 18 longer than I.

19 **Q.** Okay. So, based on that -- I
 20 mean, this indicates that you received
 21 wages from J. B. Hunt Transport of \$1800,
 22 wages of \$3900 from American General Life
 23 and wages of \$3471 from Liberty National?

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1 **A.** No.

2 **MR. NELMS:** I don't know.

3 **A.** I mean --

4 **Q.** Oh, I see. Okay. Let's flip
 5 over to salary and wages report which
 6 is -- which is the -- it looks to me like
 7 it's about -- oh, I don't know. I didn't
 8 number these pages. I'll count them. If
 9 I did that correctly, it's on page 19 of
 10 this exhibit.

11 **A.** Okay. That's where we're at.

12 **Q.** Yeah. It looks like we have
 13 federal wages from Liberty National Life
 14 of \$16,713. Whose wages were those, your
 15 wife's or yours?

16 **A.** Oh, I -- I don't know. It's
 17 not listed on there which one was which.
 18 I have no idea.

19 **Q.** Does anybody know what T
 20 hyphen S means at the top of that form?

21 **MR. NELMS:** I was thinking
 22 salary or tips or something like that,
 23 but I -- I looked down there and there

1 **A.** Yes.

2 **Q.** Would that all suggest to you
 3 that it's your wife who earned the
 4 \$16,713 from Liberty National?

5 **A.** All I can say is that she was
 6 there longer than I at Liberty National.

7 **Q.** Okay.

8 **A.** I mean --

9 **Q.** I think the form actually is
 10 self-explanatory here. If you note below
 11 those figures I just gave you --

12 **A.** Right.

13 **Q.** -- it says taxpayer \$9,171;
 14 spouse, \$16,713, for a total of \$25,884,
 15 and you are listed as the taxpayer here
 16 on the second line, if joint return, SP
 17 first name and initial, which is your
 18 spouse. So, does that clarify things?

19 **A.** Some -- somewhat, I guess.

20 **MR. NELMS:** If I might, is
 21 that your Social Security number?

22 **A.** Yes, it is.

23 **MR. NELMS:** Okay. And you're

19 (Pages 73 to 76)

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1 identified as taxpayer, right?
 2 A. That's what he's saying, yes.
 3 Q. And you don't -- you don't
 4 have any reason to dispute that is what
 5 I'm trying to get to?
 6 A. No, sir.
 7 Q. All right. So, good. Tell me
 8 the order of your employment with these
 9 companies in 2003. Who were you employed
 10 by?
 11 A. Well, it was J. B. Hunt
 12 actually first and then Liberty National.
 13 Q. And then American General?
 14 A. American General.
 15 Q. What were you doing for J. B.
 16 Hunt Transport?
 17 A. J. B. Hunt, I was a recruiter
 18 for those guys.
 19 Q. What was J. B. Hunt?
 20 A. It's a trucking company. It's
 21 a transportation company.
 22 Q. Are they an LTL carrier? Less
 23 than truckload?

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1 A. Beg your pardon?
 2 Q. What kind of carrier are they?
 3 A. Just over-the-road
 4 tractor-trailer.
 5 Q. And they'll pick up less than
 6 a truckload and take it place to place?
 7 A. I have no idea. I do not know
 8 that.
 9 Q. So, what, you were recruiting
 10 drivers for them?
 11 A. Yes. Yes.
 12 Q. How would you go about doing
 13 that?
 14 A. Just solicitation at the
 15 different truck stops, fliers.
 16 Q. Put ads in the paper?
 17 A. I never put any ads in the
 18 paper.
 19 Q. All right. And how were you
 20 compensated by J. B. Hunt?
 21 A. It was -- they paid me weekly.
 22 Q. Were you on a salary, or did
 23 your success rate --

1 A. It was a salary.
 2 Q. Do you recall what the weekly
 3 salary was?
 4 A. No, sir, I do not. I do not
 5 recall.
 6 Q. And did you quit that job?
 7 A. I left there to go to work
 8 with Liberty National.
 9 Q. So, you resigned from that
 10 employment?
 11 A. Yes, I did.
 12 Q. Where was the location that
 13 you worked out of for J. B. Hunt?
 14 A. Arkansas.
 15 Q. Okay.
 16 A. Yeah, it was Arkansas. Home
 17 headquarters.
 18 Q. The headquarters for J. B.
 19 Hunt?
 20 A. Yes.
 21 Q. Do you remember the name of
 22 your supervisor there?
 23 A. No, I do not.

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1 worked. I don't remember what the
2 training salary was right offhand.

3 Q. All right. And then you
4 resigned from your employment at Liberty,
5 is that correct?

6 A. No, actually that was before I
7 was a licensed -- I had my insurance
8 license, and in the state when you take
9 your license to become an agent, you
10 have, if I'm -- I think I'm correct with
11 this. I think you can take your test
12 twice. If you fail it twice, you've got
13 to wait six months before you take your
14 test again.

15 Q. Yes.

16 A. And I did not pass my tests.
17 Well, they could not keep me on. So, I
18 moved -- I mean, that ended my job,
19 basically.

20 Q. Do you remember when you
21 failed the test and had to leave?

22 A. No, sir, I do not. I don't
23 remember that. I know I went from there

1 employed each week during that year?

2 A. No, sir, I was employed.

3 Q. Have a look at, if you would,
4 Defendant's Exhibit D, which is your 2002
5 tax return.

6 (Whereupon, Defendant's
7 Exhibit D was marked for
8 identification.)

9 Q. This reflects wages, salaries
10 and tips on page three, I'm looking at
11 line seven, of \$22,837. And then
12 business income of \$4402 and then a
13 capital loss of \$3,000, for total income
14 that year of \$25,146. Is that correct?
15 Is that what your total income was that
16 year?

17 A. Yes.

18 Q. And on the wages component, it
19 looks like we have for you wages of a
20 little over \$5900 from Dixie
21 Homecrafters. That's on page one, the
22 second W-2, correct?

23 A. Yes, sir.

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1 to -- to American General and went
2 through their training, and, I mean, I
3 had no problems passing the test. I --
4 you know, I -- I received my license at
5 that point in time with American General.

6 Q. So, did you have a six month
7 period of unemployment there?

8 A. No, huh-uh. It was just very
9 quick transition, maybe a week to two
10 weeks, you know.

11 Q. And then you were able to
12 retake the exam --

13 A. Yes.

14 Q. -- before that six months
15 period expired?

16 A. Oh, yes. It was either -- I'm
17 saying six months. It may have been four
18 months. Four to six months you had a
19 downtime that the State would not let you
20 take the test, but I took it, and I
21 passed it.

22 Q. Did you have any periods of
23 unemployment during 2003, or were you

1 Q. And, then, we have roughly
2 \$971 from SCI Management, LP?

3 A. Yes.

4 Q. What is that entity?

5 A. That's -- I worked with --
6 actually it was Green -- Green --
7 Greenwood Funeral Service. Cemetery, not
8 the funeral home, but the cemetery.

9 Q. What were you doing with them?

10 A. I was sales, lots.

11 Q. Selling lots in a cemetery?

12 A. Yes. And headstones and stuff
13 like that.

14 Q. And then the next page of the
15 Exhibit D, I show you as having roughly
16 \$4800 in income from Sears Home
17 Improvement Products?

18 A. Yes.

19 Q. What were you doing with them?

20 A. It was home improvement.

21 Q. Was that --

22 A. Windows and siding.

23 Q. Were you calling on people, a

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1 similar deal --

2 A. Yes.

3 Q. -- where the store sets up an
4 appointment and --5 A. No, sir. This was not
6 connected to the store at all. It was
7 actually -- our appointments were
8 generated out of Atlanta through fliers,
9 telemarketing and such, and we would run
10 the leads from that.11 Q. By running leads, you would
12 then call on people?13 A. Appointments. No, sir, I
14 didn't, but they did, so it was
15 appointments. It was set appointments.16 Q. Okay. Was that a commission
17 only deal?

18 A. Yes, sir, it was.

19 Q. How long did you work for
20 Sears Home Improvement?21 A. Oh, I don't know. I worked
22 with those guys until they closed the
23 office here in Montgomery.1 (Whereupon, Defendant's
2 Exhibits E and F were marked
3 for identification.)4 Q. Are these two -- let's look at
5 E first. Is Exhibit E your 2001 federal
6 income tax return?

7 A. Yes, sir, it is.

8 Q. And does it accurately reflect
9 the income you and your wife received for
10 that year?

11 A. Yes, sir.

12 Q. And when I flip over to the
13 same salary and wages report that we just
14 talked about a minute ago for another
15 return, page 11 --

16 A. Okay.

17 Q. -- it looks like for the
18 taxpayer, which we determined is you, we
19 have a little over \$28,000 for Sears Home
20 Improvement, \$3,300 for Swift
21 Transportation --

22 A. Yes.

23 Q. -- \$418 for Drivers

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1 Q. And what were you doing with
2 Dixie Homecrafters?3 A. Same -- same thing, a few more
4 products. They had siding and gutters.5 Q. What was the sequence of your
6 employment here in 2002?7 A. I was with Home -- I was with
8 Home Depot. I went with Dixie
9 Homecrafters and then with SCI.10 Q. Well, you said Home Depot.
11 Did you mean to say Sears Home
12 Improvement?13 A. Oh, I'm sorry. Yes, Sears
14 Home Improvement.15 Q. Okay. And how long during
16 2002 did you work for each of these?

17 A. I do not recall.

18 Q. And Exhibit D is your tax
19 return that you filed with the government
20 for calendar year 2002?

21 A. Yes, sir.

22 Q. Why don't you take a quick
23 look at Exhibits E and F?

1 Management?

2 A. Right.

3 Q. Those are all of the jobs you
4 had that year?

5 A. Yes.

6 Q. And were you working with
7 Swift Transportation and then resigned
8 from them --

9 A. Yes, I did.

10 Q. -- to go to work at Sears?

11 Correct?

12 A. Yes.

13 Q. So, did you work the bulk of
14 the year at Sears, does it appear?15 A. I do not recall if it was the
16 bulk of the year or not.17 Q. Well, certainly the bulk of
18 your earnings were with Sears that year?

19 A. Yes.

20 Q. And, then, what is Drivers
21 Management?22 A. It was just a -- I guess a
23 training division of Swift.

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1 **Q.** What did you do for Swift?
 2 **A.** I drove for those guys.
 3 **Q.** Were you an over-the-road
 4 driver?
 5 **A.** No, a regional.
 6 **Q.** What does that mean?
 7 **A.** Southeast, just the southeast.
 8 **Q.** But you were driving a big
 9 tractor-trailer truck?
 10 **A.** Yes.
 11 **Q.** And how was your compensation
 12 computed for that?
 13 **A.** So much per mile.
 14 **Q.** And did you own your truck or
 15 rent it?
 16 **A.** No, sir, it was company owned.
 17 **Q.** Company-owned truck. I'm
 18 sorry.
 19 **A.** Yes, sir.
 20 **Q.** And did you resign that job to
 21 go to work at Sears?
 22 **A.** Yes, I did.
 23 **Q.** Okay. Let's go to Exhibit F,

1 it?
 2 **A.** David Murabito.
 3 **Q.** Okay.
 4 **A.** We were just actually
 5 partners.
 6 **Q.** Okay. I may have asked this
 7 previously, but where is David today?
 8 **A.** David is in Tampa, Sarasota,
 9 Florida area.
 10 **Q.** What's he doing down there?
 11 **A.** He works for Home Depot
 12 At-Home Services. The last I spoke with
 13 him, he was with Home Depot.
 14 **Q.** I see in addition to the
 15 income from that entity on the salaries
 16 and wages report that we've been looking
 17 on the previous tax returns, this one
 18 shows taxpayer, namely, you receiving
 19 \$21,997 from Edison Security?
 20 **A.** Yes.
 21 **Q.** Who owned Edison Security?
 22 **A.** Wes-Tech Edison.
 23 **Q.** And where is it located?

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1 which is your 2000 federal tax return, is
 2 it not?
 3 **A.** Yes, sir.
 4 **Q.** And that's for both you and
 5 your wife Deborah?
 6 **A.** That's correct.
 7 **Q.** If you'll flip over to about
 8 page five or so, I am seeing an income
 9 from partnership and S corporations of
 10 roughly \$18,986 from an entity called
 11 Security Experts, LLC?
 12 **A.** That's correct.
 13 **Q.** Is that the company that you
 14 owned?
 15 **A.** That was the -- that was the
 16 other company. I had actually two
 17 security companies.
 18 **Q.** Okay. And how long had you
 19 owned -- who else owned an interest in
 20 this, anyone other than you, did your
 21 wife?
 22 **A.** Yes.
 23 **Q.** Who else owned an interest in

1 **A.** They closed their -- they are
 2 no longer in this area.
 3 **Q.** Okay.
 4 **A.** As far as a branch office.
 5 **Q.** Are they still in business
 6 now?
 7 **A.** I have no idea.
 8 **Q.** So, you were an employee for
 9 them?
 10 **A.** I was a salesman.
 11 **Q.** And did you at the same time
 12 have your own security company, as well?
 13 **A.** No, I did not.
 14 **Q.** So, you -- did you resign from
 15 Edison to start your own company?
 16 **A.** No, sir, they closed the
 17 office, and after that is when I opened
 18 Security Experts.
 19 **Q.** Did your wife also work for
 20 Edison Security or not?
 21 **A.** No, sir, she did not work for
 22 Edison Security.
 23 **Q.** What was she doing at this

23 (Pages 89 to 92)

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1 period?

2 A. I don't know.

3 Q. Also I see some income from an
4 entity on here called Best Security
5 Systems, Inc. of \$1,587?6 A. Right. That was another
7 independently-owned security company here
8 in Montgomery.9 Q. And who worked for them, you
10 or your wife?11 A. Actually when Edison shut
12 down, I went to work for Best for a very
13 short period of time, then I opened -- I
14 just -- yeah, that's what I was trying to
15 think. And then David and I opened the
16 Security Experts.17 Q. What about the other company
18 that you mentioned previously, was there
19 any income from that reported this year?

20 A. In 2000?

21 Q. Yes.

22 A. No, that was before 2000.

23 Apparently it was before.

1 or --

2 A. Yeah, cold calling.

3 Q. In 2000, we also see a little
4 bit of income, I think, from Capital
5 Chevrolet, wages and salary report?6 A. Yeah, it was for a short
7 period of time I was with those guys as a
8 salesman.

9 Q. Selling cars?

10 A. Yes.

11 Q. New cars, used cars?

12 A. Yes.

13 Q. Both?

14 A. Yes.

15 Q. And then there's also a
16 reference to Osiris, O-S-I-R-I-S, Holding
17 Company on the wages and salary report?18 A. I don't have a clue to what
19 that is.20 Q. Okay. Do you own an
21 automobile at this time?

22 A. Yes, I do.

23 Q. Does your wife own one as

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1 Q. All right. I don't see any
2 income from Regions at this juncture
3 either as of 2000, so she must have
4 resigned from Regions before that as
5 well?

6 A. Yes.

7 Q. Have you ever been arrested
8 for anything?

9 A. No, sir.

10 Q. Not as a child or minor?

11 A. No.

12 Q. Have you ever had any kind of
13 a misdemeanor charge --

14 A. No, sir.

15 Q. -- or any kind of criminal
16 charge against you?

17 A. No, sir.

18 Q. -- of any kind? Say again.

19 A. No, sir.

20 Q. What did you do at Best
21 Security Systems in 2000?

22 A. I was a sales rep.

23 Q. And was that cold calling

1 well?

2 A. Yes, we did. Yes, she does.

3 Q. Do y'all own them together?

4 A. Yes, we do.

5 Q. What are they, make, model,
6 year?7 A. I've got a -- she's got a 2000
8 Mazda Miata. I have a '93 Nissan Sentra
9 that I use for work.

10 Q. Yes.

11 A. And I have a 1990 Toyota, a
12 four-wheel-drive.13 Q. As a part of the initial
14 disclosures that the court required be
15 produced in this case and that were
16 produced by your counsel last year, we
17 had -- we received some tapes. We had
18 those tapes transcribed by a court
19 reporter.

20 A. Right.

21 Q. And last week we sent the
22 transcript to your counsel and basically
23 asked that you have a look at them and

24 (Pages 93 to 96)

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1 let us know if you thought they were
 2 accurately transcribed or not. Have you
 3 done that?

4 A. I have looked at them.

5 Q. Okay. Let me ask you to take
 6 a look at --

7 MR. PARKER: It should be
 8 Exhibit --

9 MR. NELMS: M.

10 MR. PARKER: M and O.

11 Q. Let me ask you to take a look
 12 at Exhibit O first of all.

13 (Whereupon, Defendant's
 14 Exhibit O was marked for
 15 identification.)

16 A. Okay.

17 Q. And I'm going to ask you --
 18 and that's -- it has on the cover phone
 19 conversations, Charlie Thornton slash
 20 FedEx. It has an index which I know is
 21 not something that you created. That's
 22 something that the court reporter
 23 created, and it has a series of names of

1 transcript with it.

2 Q. Okay.

3 A. So --

4 Q. All right. Did you see
 5 anything from your own recollection of
 6 the tapes in reading through the
 7 transcripts that you thought was
 8 inaccurate?

9 A. There again, I can't say. You
 10 know --

11 Q. Why can't you answer that
 12 question?

13 A. Because if I read something --
 14 I mean, I'm reading this and knowing
 15 what's coming off the tape may be worded
 16 differently, I -- I cannot say with
 17 100 percent accuracy that it is exactly
 18 the way it came off the tape because I
 19 did not take the tape, listen to the tape
 20 and read the transcript at the same time.

21 Q. You already told me that.

22 What I'm asking you is, based on reading
 23 the transcript, did you see anything in

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1 people --

2 MR. PARKER: I don't think
 3 that their exhibits have an index.

4 A. I don't have that.

5 MR. PARKER: The ones, the
 6 court reporters and theirs, they just
 7 start at the first page.

8 Q. Okay. Sorry. Okay. In any
 9 case, Exhibit O, according to the court
 10 reporter who listened to the tapes, is a
 11 true and correct transcription of what's
 12 on the tapes. My question to you is,
 13 having read and reviewed these tapes and
 14 having made the tapes and having reviewed
 15 these transcripts, do you have any
 16 quarrel with the accuracy of what is in
 17 front of you as Exhibit O?

18 A. I have not been able to
 19 compare apples to apples as far as
 20 reading the total accuracy of the
 21 documents here. I cannot say they are
 22 100 percent accurate because I did not
 23 listen to the tape and then read the

1 it, based on your own participation in
 2 these conversations, that you thought was
 3 wrong? That's my question.

4 A. No.

5 Q. Did you make any recordings of
 6 any conversations with any FedEx
 7 employees other than those that are
 8 reflected in the transcripts in front of
 9 you as Exhibit O?

10 A. No, sir.

11 Q. It's true, is it not, that you
 12 did not tell any of the people whose
 13 conversations you recorded as shown in
 14 Exhibit O that you were recording the
 15 conversations?

16 A. That is true.

17 Q. So, none of these people that
 18 you were talking to, as reflected on
 19 Exhibit O, had any reason to know that
 20 you were recording the conversations
 21 because you didn't tell them that you
 22 were recording them?

23 A. I did not tell the individuals

25 (Pages 97 to 100)

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1 that I was recording, no.

2 Q. It's true, though, that you
3 had a number of conversations with FedEx
4 employees that you did not record,
5 correct?6 A. Prior to me recording these,
7 not after I started recording. Every
8 conversation after the fact was recorded.9 Q. And when did you make your
10 first recording, what date?

11 A. I do not recall that date.

12 Q. Was it May the 19th?

13 A. I do not recall the date.

14 Q. Okay. I think we're going to
15 be able to figure that out, but we'll get
16 to that.17 But your testimony is whatever
18 the earliest date is that we have -- for
19 which we have a recorded conversation,
20 from that point forward, every
21 communication you had with FedEx or with
22 Mr. Primus at the bank was recorded by
23 you?

1 A. Yes, sir.

2 MR. NELMS: Excuse me. Every
3 telephone conversation.

4 A. Yes, telephone.

5 Q. Okay. You had other
6 conversations not on the phone with
7 people that were not recorded.

8 A. No, sir.

9 Q. Okay. Well, that's what I'm
10 trying to figure out.

11 A. Okay. No, sir, I did not.

12 Q. So, whatever the earliest date
13 is where we -- where you recorded a
14 conversation, you had no communications
15 with FedEx, anybody at FedEx, other than
16 one that was actually recorded?

17 A. That's correct.

18 Q. And you knew you were calling
19 some people in Pittsburgh, Pennsylvania,
20 correct?

21 A. That's exactly right.

22 Q. Are you aware, as you --

23 A. Well, let me back up. The

1 phone numbers -- I talked to one
2 individual that was in Honolulu, Hawaii.

3 Q. Yes.

4 A. And I did not know I was
5 calling Honolulu, Hawaii.6 Q. But you know that you made
7 several telephone calls to people in
8 Pittsburgh, Pennsylvania, correct?9 A. I made phone calls to
10 Pittsburgh, Pennsylvania.

11 Q. And you recorded the calls?

12 A. Yes, I did.

13 Q. Are you aware, as you sit here
14 today, that it is a crime under
15 Pennsylvania law to record a conversation
16 and not tell the other person you're
17 recording it?18 A. I was not aware of that. I
19 was making the phone call from the State
20 of Alabama. They did not call me.21 Q. Okay. Are you aware of that
22 now?

23 A. If you're making me aware of

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1 it.

2 Q. You've not heard that before
3 today?

4 A. No, sir, I have not.

5 MR. NELMS: Hang on a minute.
6 You and I talked about it.

7 A. What?

8 MR. SPOTSWOOD: I didn't mean
9 to inquire into your communications.10 MR. NELMS: I know, but if
11 you're not telling him about the
12 conversations that you and I have had, I
13 waive any attorney-client privilege.
14 We --

15 A. Oh, we've talked, sure.

16 MR. NELMS: All right. Did

17 I --

18 A. I thought he was talking about
19 FedEx.20 MR. NELMS: Well, y'all be
21 clear.22 Q. (BY MR. SPOTSWOOD:) You've
23 just revealed, I guess, that you did have

26 (Pages 101 to 104)

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1 some communications with your counsel
 2 about that issue. I don't mean to
 3 inquire into those, but you did discuss
 4 those issues, correct?

5 MR. NELMS: Right. I waive
 6 any privilege. Do you wish to waive any
 7 privilege that we might have related to
 8 this specific issue of whether or not you
 9 were aware, of course, after the fact
 10 that it is a crime in Pennsylvania to
 11 record conversations without letting the
 12 party being recorded know that, in fact,
 13 they are being recorded? Do you waive
 14 that part of the attorney-client
 15 privilege?

16 A. Sure.

17 MR. NELMS: It's your
 18 privilege, not mine.

19 A. I mean, I don't really -- I
 20 mean, I'm wanting to understand what
 21 you're saying to me.

22 Q. (BY MR. SPOTSWOOD:) Well, let
 23 me just ask it this way.

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1 A. Okay.

2 Q. Before you talked with your
 3 counsel, did you have any idea or
 4 knowledge of what the law was in
 5 Pennsylvania about recording
 6 conversations?

7 A. No, sir, I did not.

8 MR. NELMS: There you go.

9 Q. When you recorded these
 10 conversations, did you record all the
 11 conversation or some of it?

12 A. All the conversation.

13 Q. What kind of equipment did you
 14 use to do that?

15 A. Just a hand -- a hand-held
 16 recorder off of a speaker phone, my home
 17 phone.

18 Can I take a moment? I need
 19 to run to the restroom.

20 MR. SPOTSWOOD: Absolutely.
 21 (Said deposition was in recess
 22 at 11:32 a.m. until 11:39
 23 a.m., after which the

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1 following occurred:

2 Q. (BY MR. SPOTSWOOD:) On
 3 Exhibit O, and I know you guys don't have
 4 this -- what's our last exhibit?
 5 (Whereupon, Defendant's
 6 Exhibit R was marked for
 7 identification.)

8 Q. We'll take a look at this in a
 9 second. This is the index that the court
 10 reporter did that apparently is not on
 11 your -- on your page. It says here,
 12 "These conversations were transcribed in
 13 the order listed above just as they were
 14 recorded on the audiotapes." And my
 15 question to you is from -- can you
 16 confirm that these are listed here in
 17 date order? In other words, the first --

18 A. No, sir, I can't confirm it.

19 There's no way I can confirm it unless I
 20 listen to the tape and heard the dates
 21 themselves, but I can't accurately --

22 Q. Well, I don't believe, with
 23 one or two exceptions, that there are

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1 dates stated on the transcripts.

2 A. Well, I -- I remember after I
 3 said the date on the -- on the tape. I'm
 4 not saying I did it on each and every one
 5 of them, but I can recall doing that.

6 Q. I recall one instance where
 7 you did, too, and that's what I'm looking
 8 for right here to see if I can find it.
 9 I read through these, I'll tell you, very
 10 recently.

11 A. Yeah, I noticed one of them.
 12 But I know there was more than one
 13 occasion that I actually put the date on
 14 there.

15 Q. Here we go. On page 21, that
 16 is the first reference I see to a date,
 17 and it says -- and page 21 is after
 18 your -- the recordings of the
 19 conversations of Jeff White, Kent
 20 Gastineau and then again Kent Gastineau.
 21 And on page 21 it says these calls were
 22 made on May 19th '05. Do you see that?

23 A. Yes, sir.

27 (Pages 105 to 108)

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1 **Q.** And, so, would that be your
 2 best recollection that that's when those
 3 calls were made, preceding from page one
 4 to page 21?

5 **A.** I cannot say with 100 percent
 6 accuracy that all of these calls were
 7 made on the 19th. Apparently the one
 8 that I spoke to, Angela --

9 **Q.** Yes?

10 **A.** -- what it's saying to me
 11 now --

12 **Q.** You're the one recording these
 13 calls.

14 **A.** -- is that this -- this call
 15 was made on the 19th.

16 **Q.** Can you explain why it says
 17 calls, plural?

18 **A.** No, I cannot explain that. I
 19 did not -- I did not do this
 20 transcription.

21 **Q.** Well, I understand that, but I
 22 can -- I can assure you this was done by
 23 a very competent professional.

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1 **A.** I don't even question that. I
 2 don't question that.

3 **MR. NELMS:** Object to the
 4 form.

5 **A.** What --

6 **Q.** I'm really kind of struggling
 7 with here is, I mean, why are you having
 8 a hard time figuring this out. These are
 9 very straightforward questions here.
 10 We've got a phone call to Jeff White, you
 11 know, you -- you're trying to find him.
 12 You don't have any success. That's pages
 13 one through three, and then starting on
 14 page four, which really kind of goes --
 15 goes in sequence here. When you called
 16 Jeff White, whom you didn't get, he told
 17 this person Cheryl to tell you to call
 18 Kent, so that's what you do, you call
 19 Kent.

20 **A.** Okay.

21 **Q.** And then you have this
 22 conversation with Kent apparently as
 23 recorded here.

1 **MR. NELMS:** Bob, is there a
 2 question in here?

3 **MR. SPOTSWOOD:** Yeah, I'm
 4 going to get to it.

5 **MR. NELMS:** Well, I'm going to
 6 object to characterizations of the
 7 deponent's willingness or ability to
 8 answer the question. He's answering them
 9 as you're asking them. Characterizations
 10 otherwise are really not your province.

11 **Q.** Well, I -- my question is very
 12 simple. Why can't you confirm for me
 13 with this transcript in front of you that
 14 these calls, just as it says here on page
 15 19, were made -- I'm sorry, page 22, were
 16 made on the 19th of May?

17 **MR. NELMS:** I object to the
 18 form again because it's asked and
 19 answered.

20 **MR. SPOTSWOOD:** Well, it
 21 hasn't been asked and answered after he's
 22 just had a chance to look through what
 23 we're talking about, and that's what I'm

1 asking you to do, and if you need to read
 2 the first 22 pages here --

3 **A.** I have read those.

4 **Q.** Okay. Now, my question to you
 5 is isn't it true that the calls that
 6 precede page 21 were made on the 19th of
 7 May just like you say they were?

8 **A.** I cannot confirm that. I
 9 cannot. And I am being honest. I cannot
 10 confirm that.

11 **Q.** Okay. What calls do you think
 12 you were talking about near then? Do we
 13 need to get the tape recorder out and
 14 listen to the tapes?

15 **MR. NELMS:** Object to the
 16 form. Just try to answer his question
 17 the best you can.

18 **A.** I cannot confirm that, Bob.
 19 I'm sorry.

20 **MR. NELMS:** Why don't you ask
 21 him what his impression is?

22 **Q.** I'm glad to do that. Is it
 23 your best impression that these three

28 (Pages 109 to 112)

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1 calls were made on the 19th?

2 A. As far as looking at this
3 particular document --

4 Q. Yeah.

5 A. -- the impression that this
6 document gives me that these calls were
7 made. As far as me knowing they were
8 made, I cannot confirm that.

9 Q. Okay.

10 MR. NELMS: Let's take a
11 break.12 MR. SPOTSWOOD: Okay. Thank
13 you.

14 MR. NELMS: Am I --

15 MR. SPOTSWOOD: No, go ahead.
16 (Said deposition was in recess
17 at 11:46 a.m. until 11:49
18 a.m., after which the
19 following occurred:)20 Q. (BY MR. SPOTSWOOD:) Let's
21 turn to Exhibit N for a minute.22 (Whereupon, Defendant's
23 Exhibit N was marked for1 MR. PARKER: I believe it's on
2 the last page.3 Q. Yes, it is, on page 53, it
4 says, "Today is the 19th, and that's all
5 I have for today, so I'll end this
6 conversation now."7 So, would it be your best
8 judgment that this would have been
9 recorded by you on the 19th of May?

10 A. Yes, sir.

11 Q. Of 2005?

12 A. Yes, sir.

13 Q. Okay. And my recollection is
14 you filed this lawsuit on May the 25th of
15 2005?

16 A. I don't recall the date.

17 Q. Is this the first time that
18 you had recorded conversations with
19 persons without advising them that you
20 were doing so?

21 A. Yes, sir, it is.

22 Q. And have you done it since
23 this time?

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1 identification.)

2 Q. Do you have that in front of
3 you?

4 A. Yes, sir, I do.

5 Q. This is a transcript of a tape
6 that we received from your counsel as a
7 part of the initial disclosures in the
8 case, and it purports to be a statement
9 that you dictated. Does this, in fact,
10 appear to be a statement that you
11 dictated into the tape recorder?

12 A. Yes, sir.

13 Q. Did you see, in reviewing this
14 transcript, any errors that were
15 noticeable to you, recognizing that you
16 haven't done a word-by-word transcript
17 versus tape comparison?

18 A. No, sir.

19 Q. I know that when I originally
20 read through this that I wrote on the
21 cover of it May 19th, and I suspect I did
22 that because somewhere in here it says
23 the date you recorded it.

1 A. No, sir.

2 Q. According to your amended
3 complaint, your first introduction to
4 FedEx Ground came when you read a
5 newspaper advertisement for an
6 information session about FedEx Ground
7 independent contractor positions, is that
8 correct?

9 A. That's correct.

10 Q. What paper did you see this ad
11 in?

12 A. The Montgomery Advertiser.

13 Q. Do you recall what the ad
14 said?15 A. No, sir, I do not recall it
16 verbatim.17 Q. You don't have a copy of it,
18 do you?

19 A. No, sir, I don't.

20 MR. NELMS: I'm sorry, a copy
21 of the ad?

22 MR. SPOTSWOOD: Yes.

23 MR. NELMS: Yeah, it was in

29 (Pages 113 to 116)

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1 the initial disclosures.

2 A. We had several copies.

3 MR. NELMS: If it's not, I'll

4 give it to you now.

5 MR. PARKER: I don't think we
6 got it.

7 MR. NELMS: I've got it.

8 Sorry.

9 MR. PARKER: We had a list of
10 documents.

11 MR. NELMS: This is the
12 original. We can put it in the record.
13 Find it for me, please.

14 A. What.

15 MR. NELMS: I forget what
16 it -- is that it (indicating)? No.

17 A. (Examining document.)

18 MR. NELMS: It may not be on
19 that page. It may be on the other page.

20 A. Here it is right here. That's
21 it, independent contractors which were --
22 no, this is for June.

23 MR. NELMS: This is --

1 on it.

2 (Said deposition was in recess
3 at 11:54 a.m. until 11:57

4 a.m., after which the

5 following occurred:)

6 (Whereupon, Defendant's
7 Exhibits S and T were marked
8 for identification.)

9 Q. All right. Have a look here,
10 if you would, at Defendant's Exhibit S.

11 This is a copy of a classified ad from
12 the paper June the 12th, 2005.

13 MR. SPOTSWOOD: And, Counsel,
14 if I understand you correctly, this came
15 from The Montgomery Advertiser, is that
16 correct?

17 MR. NELMS: Yes.

18 Q. And is this similar to the ad
19 that you saw back in January?

20 A. This is the exact ad except
21 for the dates when the sessions would be.

22 MR. NELMS: I want to put that
23 in.

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1 A. This is where they was, you
2 know, keeping on advertising. This is
3 the June paper, but we had a -- I went --

4 MR. NELMS: Point to it for
5 me.

6 A. It's right here.

7 MR. NELMS: All right.

8 A. That's the same ad.

9 MR. SPOTSWOOD: Do you want --
10 can we get somebody to take a picture of
11 that?

12 MR. NELMS: Yeah, do you want
13 me to copy that front page? We've got
14 whatever our -- where did it go?

15 MR. PARKER: What are you
16 looking for?

17 MR. GASTINEAU: A copy of this
18 right here.

19 MR. NELMS: Oh, all right.

20 You already got a copy. One second.

21 MR. SPOTSWOOD: And be sure
22 you get me a date on that, too, if you
23 can arrange to copy it so it has a date

1 Q. Do you have -- hang on a
2 second.

3 (Off-the-record discussion.)

4 Q. (BY MR. SPOTSWOOD:) Do you or
5 your counsel -- I will ask you both this:
6 Is this the only ad like this that y'all
7 have?

8 MR. NELMS: Charlie says that
9 he went and copied some more.

10 A. I did not copy them. I went
11 to the -- to the library, and I went back
12 in the archives of the newspaper and
13 brought the originals. I cut the
14 original out and brought them in.

15 MR. NELMS: To me?

16 A. Yes, brought them to the
17 office, gave them to Audrey.

18 MR. NELMS: I will get them
19 for you when I can find them. I don't
20 see them in my file.

21 A. Because there were times in
22 between January and May the ad was still
23 being run, so I got from January all the

30 (Pages 117 to 120)

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1 way through May and above -- beyond, and
 2 I brought them in and gave them to
 3 **Audrey.**

4 MR. SPOTSWOOD: And Audrey is
 5 an employee here in the firm?

6 MR. NELMS: Yes, secretary.

7 MR. SPOTSWOOD: Okay.

8 **Q.** (BY MR. SPOTSWOOD:) Going
 9 back to our discussions for just a
 10 minute --

11 MR. NELMS: Keep going, Bob.

12 **Q.** -- we've -- you -- you have
 13 testified, if I remember it correctly,
 14 that you did not record all of your
 15 conversations with Kent Gastineau or
 16 other employees because some of those
 17 conversations either were in person, and
 18 you recorded none of those, right, so
 19 far?

20 **A.** Let me say this: I had no
 21 conversations with anybody face-to-face
 22 after I recorded -- started the
 23 recordings on the telephone.

1 documents and signed in the wrong place
 2 and was going to have to have them
 3 documents e-mailed back to him before I
 4 could go to work. And I had put my
 5 livelihood on the line, my credit on the
 6 line, and I had a \$50,000 vehicle sitting
 7 in my driveway with FedEx all over it,
 8 and uniforms to this day that are hanging
 9 in my closet to go to work. And I wanted
 10 to know what was going on, and if I,
 11 Charlie Thornton, did not prepare myself
 12 or get my ducks in line, nobody else was
 13 going to do it for me. And I had to have
 14 proof of what -- what was going down
 15 because I was in a really, really bad
 16 situation. I had a truck sitting out
 17 there that had a seven hundred and
 18 something dollar payment on it that was
 19 due in two weeks and had no -- no job.
 20 My livelihood, my wife, my family was on
 21 the line.

22 Now, I'm just answering it
 23 truthfully, Bob, truthfully. And I had

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1 **Q.** Okay.

2 **A.** Before that there was no
 3 recordings --

4 **Q.** All right.

5 **A.** -- either on the phone, you
 6 know, or off, face-to-face.

7 **Q.** All right. Why did you think
 8 it was appropriate to record
 9 conversations with these individuals who
 10 you recorded?

11 MR. NELMS: Object to the
 12 form. Answer the question.

13 **A.** Oh, okay. I'm sorry. Because
 14 I had prepared myself to go to work. I
 15 had put myself out on a limb. I had put
 16 myself in a position where I really
 17 thought I had an excellent, excellent
 18 opportunity to go to work for -- to go to
 19 work for an excellent company, and the
 20 night -- the night before I was to get
 21 into that truck and start my job, Kent
 22 calls me and tells me I cannot go to
 23 work, that he had signed off on some

1 been given the run-around for so long, I
 2 had to protect myself.

3 **Q.** And why did you record your
 4 history that's reflected in Exhibit N?

5 **A.** Because it was the best way at
 6 the time for me to bring it back in my
 7 mind and record it on tape other than
 8 writing it down.

9 **Q.** Okay.

10 **A.** I could think and talk at the
 11 same time and put it down. It would be
 12 more accurate this way than writing it.

13 **Q.** Is it fair to say that by the
 14 time you started recording these
 15 conversations that you decided that you
 16 were going to sue FedEx?

17 **A.** No, sir. It was not. It was
 18 not. But I wanted to -- I wanted to have
 19 something that I could hold somebody to.
 20 Kent had called me, and he had asked me
 21 how many years I wanted on the contract.
 22 I wanted two years. He was taking care
 23 of it. I trusted the man. I trusted

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1 everybody in FedEx from the trainer I
 2 went and trained with in Birmingham to
 3 everybody. I was excited because I was
 4 not just looking for this for myself. I
 5 was looking at it for four boys down the
 6 road because I had investigated this, my
 7 wife and myself, and I knew that it could
 8 possibly be a future for my -- my boys
 9 down the road. And, no, I did not. I
 10 did not have, when I started recording
 11 this, intentions on suing anybody. My
 12 intentions were to have a job.

13 Q. Six days later you filed a
 14 lawsuit?

15 A. Six -- six days. How long
 16 does it take you to make up your mind?

17 MR. NELMS: Just answer the
 18 question.

19 A. I knew -- yes, six days later.

20 MR. NELMS: If that was a
 21 question.

22 MR. SPOTSWOOD: It was a
 23 question.

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1 A. I gave those notes to Andy.
 2 MR. SPOTSWOOD: I'm supposed
 3 to have that. I mean, we have asked it
 4 every which way known to man for any
 5 documents he has related to any of this.
 6 We don't have them.

7 MR. NELMS: Off the record if
 8 that's all right with you.

9 MR. SPOTSWOOD: Yes.
 10 (Off-the-record discussion.)

11 (Said deposition was in recess
 12 at 12:06 p.m. until 12:38
 13 p.m., after which the
 14 following occurred:)

15 (Whereupon, Defendant's
 16 Exhibit U was marked for
 17 identification.)

18 MR. SPOTSWOOD: I am putting
 19 this U on a blank part of this piece of
 20 paper here.

21 MR. NELMS: Understood.
 22 (Off-the-record discussion.)

23 Q. (BY MR. SPOTSWOOD:) Mr.

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1 Q. (BY MR. SPOTSWOOD:) Did your
 2 wife attend the sessions that you
 3 attended, which I think from some -- let
 4 me break this question down.

5 When did you attend the
 6 informational session about becoming a
 7 driver, contractor?

8 A. January.

9 Q. Does January 4 stick with you?

10 A. I cannot recall the date, but
 11 it was in January. I believe it was on a
 12 Thursday.

13 Q. Okay. Did anybody attend with
 14 you, your wife?

15 A. Yes, my wife. And she's a
 16 sharp lady, I can tell you.

17 MR. NELMS: Answer his
 18 questions.

19 Q. Do you know whether either you
 20 or she made any notes of any kind in
 21 connection with this?

22 A. Yes, I did.

23 Q. Where are those note?

Thornton --

1 A. Yes, sir.

2 Q. -- I'm going to show you what
 3 I've marked as Defendant's Exhibit U,
 4 which is a two-page -- it's front and
 5 back, got writing on the front and back.

6 A. Yes.

7 Q. These are notes of yours, are
 8 they not?

9 A. Yes, sir, they are.

10 Q. And is everything on these two
 11 pages in your handwriting?

12 A. Yes, sir, it is. Okay.

13 Except -- I'm sorry. Let me back up.

14 Except for -- except for one at the
 15 bottom of the first page here, you see
 16 the little star that says what areas are
 17 open.

18 Q. Yes.

19 A. My wife wrote that.

20 Q. All right. And -- okay.

21 A. And if you see out to the
 22 side, I asked that question. It says

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32 (Pages 125 to 128)

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1 Montgomery, Troy and Wetumpka, Elmore.
2 Q. Yes.
3 A. And that was the response --
4 that was a response from Stan.
5 Q. All right. Where did this
6 session with Stan take place?
7 A. The Holiday Inn 85 in
8 Montgomery.
9 Q. And who else presented
10 information about the company other than
11 Stan?
12 A. No one.
13 Q. How many people were in
14 attendance?
15 A. I do -- I really don't recall.
16 There was probably seven to ten people
17 there.
18 Q. What do you recall, whether
19 you look at these notes or not, that Stan
20 said about the job itself?
21 A. Well, I recall it's pretty
22 much been embedded in my mind. I recall
23 everything he actually said. He went

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1 into the presentation, and everybody left
2 except my wife and one other individual.
3 It was a gentleman.
4 Q. When you say they left, you
5 mean in the middle of the presentation,
6 at the end of the presentation?
7 A. At the end of the
8 presentation.
9 Q. Okay.
10 A. And, so, we at that time was
11 asking him questions, and --
12 Q. What was his presentation
13 basically? What was the substance of
14 what he provided to you at the
15 presentation?
16 A. Well, the substance of the
17 presentation was that they were in need
18 of contractors and he described the job,
19 how hard the job would be. He described
20 the pay of the job, the training, and
21 that you had to be able to secure
22 financing on a delivery type vehicle.
23 Q. Did he say anything about

1 being an independent contractor?
2 A. Yes, sir.
3 Q. Is that what the job was
4 described as?
5 A. Yes. He said that -- well, he
6 told us that he was the ground manager,
7 but he was pretty much running both
8 ground and home delivery and that the --
9 Q. This was a seminar for
10 becoming a -- or a presentation or an
11 information session about becoming a home
12 delivery, independent contractor driver?
13 A. Yes, sir. Yes, sir.
14 Q. Did he describe the contract
15 that the independent contractors would
16 have to sign?
17 A. He did not get into the
18 contractor.
19 Q. Did he tell you, though, you'd
20 have to sign a written contract?
21 A. He did not say that.
22 Q. Okay. You understood that
23 later, I guess, when you saw that book

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1 we've been passing around here?
2 MR. NELMS: Object to the
3 form.
4 A. Does that mean answer?
5 Q. Yes.
6 A. This is new to me. I don't
7 know. I signed so many different
8 documents while I was there. I was under
9 the assumption that I had signed off to
10 be a contractor because the phone call
11 that I received from Kent asking me about
12 the one- or two-year contract, I asked
13 him to explain it to me, and he just said
14 it's either a one- or two-year. They
15 review your performance, and -- and, you
16 know, it's based on that. I said
17 definitely I want two years.
18 (Off-the-record discussion.)
19 Q. (BY MR. SPOTSWOOD:) Let me go
20 ahead and mark that. This is marked as
21 Defendant's Exhibit V.
22 (Whereupon, Defendant's
23 Exhibit V was marked for

33 (Pages 129 to 132)

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<p style="text-align: right;">Page 133</p> <p>1 identification.)</p> <p>2 Q. This is, I'll state for the</p> <p>3 record, a document that your counsel</p> <p>4 produced to us today. It's called P & D</p> <p>5 Contractor Business Guide. It has a</p> <p>6 number up on the top of the first page,</p> <p>7 06789 P 149 RES, and it has on the inside</p> <p>8 a this week fuel supplement page that's</p> <p>9 dated 3/22, and then it's hard to tell</p> <p>10 what year of 2000 it is, because it's cut</p> <p>11 off. And, then, it has a -- starts with</p> <p>12 FedEx home delivery standard contractor</p> <p>13 operating agreement. Then it has a table</p> <p>14 of contents, agreement, leased equipment,</p> <p>15 various attachments. When did you</p> <p>16 receive this book?</p> <p>17 A. As far as the date, I'm not</p> <p>18 sure. I can't recall the date when I</p> <p>19 received it. It was in -- well, I just</p> <p>20 don't recall the date. It was before I</p> <p>21 received the truck.</p> <p>22 Q. It was before you received the</p> <p>23 truck?</p>	<p style="text-align: right;">Page 135</p> <p>1 page -- on page 29, there is a signature</p> <p>2 line for FedEx Home Delivery, and there</p> <p>3 is a contractor line, and it asks for</p> <p>4 signature, typed name, witness. Did you</p> <p>5 ever sign a contract like this?</p> <p>6 A. Like I said earlier, I signed</p> <p>7 so many documents, I do not -- I do not</p> <p>8 know if it was that document or not.</p> <p>9 Q. All right. So, as we sit here</p> <p>10 today, and I can assure you that --</p> <p>11 A. I was told that this document</p> <p>12 here was for me to keep.</p> <p>13 Q. All right. Who told you that?</p> <p>14 A. Kent.</p> <p>15 Q. What I'm -- what I can tell</p> <p>16 you is that your lawyers have not</p> <p>17 produced a signed contract for me, okay?</p> <p>18 And I take it you never provided one to</p> <p>19 them?</p> <p>20 A. I gave Andy everything I have.</p> <p>21 Q. All right. And I can tell you</p> <p>22 that our files do not reflect a signed</p> <p>23 contract from you. And your testimony</p>
<p style="text-align: right;">Page 134</p> <p>1 A. Yes, sir.</p> <p>2 Q. Was it in -- as early as</p> <p>3 February that you saw that?</p> <p>4 A. I do not recall.</p> <p>5 Q. Do you recall whether it was</p> <p>6 immediately before you received the</p> <p>7 truck?</p> <p>8 A. I do not recall.</p> <p>9 Q. Just before you received the</p> <p>10 truck?</p> <p>11 A. I know -- I know that I</p> <p>12 received it before I received my truck.</p> <p>13 Q. Okay. Let me, if I may,</p> <p>14 Counsel, unless you need it, let me call</p> <p>15 your attention to the agreement in here</p> <p>16 which is in the second tab, a standard</p> <p>17 contractor operating agreement. Did you</p> <p>18 read this document?</p> <p>19 A. Yes, I have.</p> <p>20 Q. You did?</p> <p>21 A. Yes, I have.</p> <p>22 Q. And when we get over here to</p> <p>23 the end of this document, there is a</p>	<p style="text-align: right;">Page 136</p> <p>1 today is you can't really remember</p> <p>2 signing a contract like this?</p> <p>3 A. I signed so many documents I</p> <p>4 do not -- I do not recall what documents</p> <p>5 I actually signed. But I do know that</p> <p>6 Kent called me and told me he was putting</p> <p>7 me in for two years.</p> <p>8 MR. NELMS: Just answer his</p> <p>9 questions.</p> <p>10 A. Okay.</p> <p>11 Q. And that that was the contract</p> <p>12 that he was going to request for you, he</p> <p>13 was going to request a contract for two</p> <p>14 years?</p> <p>15 MR. NELMS: Object to the</p> <p>16 form.</p> <p>17 A. He never --</p> <p>18 Q. Sir?</p> <p>19 A. He never said that to me. He</p> <p>20 didn't ever --</p> <p>21 Q. Well, what does it mean to you</p> <p>22 when he said he was going to put in for</p> <p>23 two years? Doesn't that mean request a</p>

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<p style="text-align: right;">Page 137</p> <p>1 two-year contract for you? Are you 2 trying to tell me something else? 3 A. No, I'm telling you that the 4 phone conversation was he was signing me 5 up for two years. 6 Q. All right. 7 A. And he was submitting it -- 8 submitting it. 9 Q. All right. 10 A. There was never a request. 11 Q. Oh, you never requested a 12 two-year contract? 13 A. No. 14 MR. NELMS: Object to the 15 form. 16 Q. You didn't? 17 MR. NELMS: Answer his 18 question, if you can. 19 Q. You didn't? 20 A. What? 21 MR. NELMS: Answer his 22 question if you can. 23 A. Pardon me, re --</p>	<p>1 said I'd like a two-year, right? It's 2 not hard. 3 A. Right. 4 Q. All right. I know that -- Mr. 5 Thornton, I know that a lot of different 6 things happened that we're going to talk 7 about during the course of this three- or 8 four-month period, and I will tell you 9 that one of the things I really think 10 would be helpful for both of us is that 11 if we try to do this sort of over a time 12 line, so that's what I'm going to try to 13 do. I just want you to know where I'm 14 going. 15 On this sheet, Defendant's 16 Exhibit U here, if I may, can I look at 17 your original -- 18 A. Yes. 19 Q. -- because I noticed that 20 there was a little yellow highlighter on 21 the original for W-E-P-T Elmore, which I 22 assume means Wetumpka? 23 A. Yes.</p>
<p style="text-align: right;">Page 138</p> <p>1 Q. You didn't respond to his 2 inquiry about one or two years with a 3 request for a two-year contract? 4 A. I -- what I asked him on the 5 phone was what does the -- what does the 6 one- or two-year contract mean because I 7 was going to be a long-term employee, and 8 he explained it to me this way: FedEx 9 has the right to renew it. It's 10 according to the way you perform in the 11 field. You keep your maintenance up on 12 your truck and keep your -- keep yourself 13 in line with FedEx rules and regulations. 14 I said two years because I -- hey, I'm 15 not going anywhere. 16 Q. But you don't view that as 17 requesting a two-year contract? 18 MR. NELMS: Object to the 19 form. 20 A. No, I do not. 21 Q. Okay. 22 A. He asked me -- 23 Q. One-year or two-year and you</p>	<p>1 Q. Okay. Why is there this 2 highlighter there? 3 A. No, I have no idea why it's on 4 there. 5 Q. No significance to you? 6 A. No. 7 Q. There's also a question mark 8 by Troy. 9 A. Right. 10 Q. What's the significance of 11 that if you can recall? 12 A. I was told at the time that 13 they had someone that possibly -- would 14 possibly be taking that route over, but 15 it wasn't for sure. 16 Q. Okay. And the specific 17 question that your wife asked, I take it, 18 since you said this is her handwriting in 19 brackets, what areas are open, that was a 20 question that you asked or that she 21 asked? 22 A. She wanted me to ask. 23 Q. And you asked it --</p>

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1 A. Yes, sir, I did.	1 Q. Okay. And then there's a
2 Q. -- to Stan? Was that at the	2 462-4690 phone number. What's that
3 conclusion of the session when most	3 number, if you remember?
4 everybody else had left?	4 A. I don't -- I don't -- I don't
5 A. Yes.	5 recall. I don't know what that number
6 Q. And then you wrote down his	6 is.
7 response?	7 Q. All right. And the next item
8 A. Yes, sir, I did.	8 here is eight-day course, you pay. What
9 Q. Montgomery, maybe Troy, I	9 does that mean?
10 guess, question mark, Troy and Wetumpka,	10 A. The course in Birmingham was
11 Elmore?	11 eight days, and --
12 A. That's correct.	12 Q. What was that course for?
13 Q. Okay. Up at the top here you	13 A. It was for training. It was
14 marked down Joe McDonald, Thursday.	14 for Smith driver training. It was for
15 What's the significance of that?	15 the hand-held scanner training. It was
16 A. Joe McDonald was the -- well,	16 with -- taught by Omar Newman.
17 Thursday actually is the date that the	17 Q. And was that -- when you say
18 meeting was held, the session.	18 you pay, what does that mean?
19 Q. Yes.	19 A. Well, it was -- we was -- we
20 A. Joe McDonald, he was the	20 was asking questions about whether to
21 terminal manager --	21 stay there in Birmingham in a motel or
22 Q. Yes.	22 come -- drive back, and he said, well, if
23 A. -- in Birmingham, and that's	23 you elect to stay, you'll pay. You'll
1 who I was to report to for training.	1 pay for the room.
2 Q. And there's a number listed	2 Q. You were paid for the training
3 there. Is that Stan Trott's number,	3 time, I take it --
4 277-0030?	4 A. Yes, sir.
5 A. Yes, sir.	5 Q. -- in this course? And then
6 Q. And we have another number	6 there's a bracketed benefits, you pay.
7 here listed 395-8387 and underneath that	7 What does that mean?
8 dock. What is that?	8 A. Okay. That is your benefits
9 A. I do not recall that number.	9 as far as your insurance, your
10 I know it has something to do with FedEx.	10 responsibility for your own medical
11 It may be a phone number out on the dock.	11 insurance.
12 I don't -- I can't remember.	12 Q. As an independent contractor,
13 Q. All right. And you had on the	13 you pay for all of that stuff on your
14 line right next to dock, it says 50,000	14 own?
15 and then 75,000 year income.	15 A. Yes, sir. Yes, sir.
16 A. Right.	16 Q. All right. And then we have
17 Q. So, that means a range of	17 Gastineau, Kent, his phone number.
18 income 50,000 to 75,000, is that what	18 390-0480, is that what that means?
19 that meant to you?	19 A. That's correct.
20 A. Yes.	20 Q. And then there's a straight
21 Q. And then it says truck average	21 line down the middle of the page there,
22 35,000 per year cost?	22 and to the right of it it says starting
23 A. Right.	23 time and then three-week month. What

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1 does all that mean?	1 was just which door to go in.
2 A. The question I asked Stan was	2 Q. 6 p.m. at night it looks like,
3 once you complete your training in	3 is 6 p.m. right?
4 Birmingham and you come out, you've got	4 A. Well, it was actually in the
5 to drive to the terminal, and how long	5 morning. I don't know why I put p.m. on
6 does that actually take before you're	6 it.
7 assigned and you're out on the road	7 Q. Okay. And that was to report
8 working. He said three weeks to a month.	8 to begin the process of --
9 Q. And then the next line is a	9 A. Of training.
10 van number?	10 Q. -- training and completing
11 A. That was the number they	11 paperwork and that stuff?
12 issued me on my van.	12 A. Yes, I completed a lot of
13 Q. Okay. Well, that -- what I'm	13 paperwork.
14 trying to figure out, I guess, from this	14 Q. Okay. And then we got a
15 page in part, is that is obviously	15 number on the right 36116. What does
16 something you didn't write down on the	16 that mean?
17 day of this meeting?	17 A. That -- that is a zip code,
18 A. No, sir. You're right.	18 that Montgomery route, that is the zip
19 Q. That's something you wrote	19 code of that route.
20 down later when you knew that?	20 Q. Who told you that?
21 A. Right.	21 A. Well, Kent told me that.
22 Q. Okay. And then the next item	22 Q. Okay. So, this wasn't
23 here we've got to the left of the three	23 something written on this piece of paper
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1 months -- three week month entry, I see	1 the presentation day when Stan was there?
2 S --	2 A. No, sir.
3 A. That's State Farm.	3 Q. All right. Was anything
4 Q. -- Farm.	4 else -- well, no. I withdraw that.
5 A. That was the phone number to	5 Then we have motel plus
6 my wife.	6 Birmingham plus kids. What does that
7 Q. And then Jeff White, a 404	7 mean?
8 number?	8 A. I don't know. It was probably
9 A. Yes, sir. That was --	9 something to jog my memory about my kids,
10 Q. Is that something written down	10 but when I was going to be -- well, just
11 later?	11 the motel Birmingham -- I was just doing
12 A. Yes, sir. It actually was.	12 some --
13 That was the number to Kent's boss or	13 Q. Just doodling?
14 Stan's boss.	14 A. Doodling, I guess, on that to
15 Q. Whom you called much later in	15 jog my memory.
16 the process?	16 Q. What about underneath the next
17 A. Yes.	17 line there, we have a 1-800 number for
18 Q. And then below that we have	18 Joe McConnell. Was that something that
19 Tuesday, hyphen, 6 p.m., ground second	19 was written down the day of --
20 front on right; what does that mean?	20 A. That was --
21 A. That was when I was to report	21 Q. -- the seminar?
22 at the terminal here in Montgomery. It	22 A. No, that was after I went to
23 says 6 o'clock in the morning, and that	23 the -- before I ever went to Birmingham,

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<p>1 I went to the terminal to see Stan 2 because I had to go to the terminal. I 3 had to do paperwork there, and I got this 4 information on who to contact at the 5 Birmingham -- Birmingham terminal where I 6 was going for training, and he gave me 7 Joe's number. He gave me the 1-800 8 number there.</p> <p>9 Q. All right. And, then, to the 10 left of that, we have FedEx B'ham, and 11 then -- what was that all about, those 12 entries there, and then it says M-O-R-I-O 13 or M-A.</p> <p>14 A. That's Mario. He was a -- he 15 was an individual at the Birmingham 16 terminal that I called to confirm 17 everything, and that's who I spoke to, so 18 I just wrote his name down.</p> <p>19 Q. Yes. And then to the left of 20 our exhibit sticker here, we have 21 March 29th, Joe, 423-296-0253. What's 22 that about?</p> <p>23 A. I had talked to Joe --</p>	<p>1 really don't know.</p> <p>2 Q. All right. And then to the 3 right of that we've got more Joe 4 McConnell numbers, it looks like. Is 5 that what those are?</p> <p>6 A. Yes, sir. That's just a -- 7 other than the 1-800 number.</p> <p>8 Q. All right. And then back, 9 next line down, two open, eight day. 10 What does that mean?</p> <p>11 A. I have no clue. I don't know.</p> <p>12 Q. Is that your handwriting, 13 though?</p> <p>14 A. Yes, sir, it is.</p> <p>15 Q. And then flip the page over, 16 if you would. What is -- what's the 17 significance of these items? Just start 18 on the top line. We've got a 404 number, 19 which I know is Atlanta.</p> <p>20 A. That was a -- when all this 21 was coming down, they were trying to tell 22 me they wanted me to be a contractor out 23 of Anniston, Alabama. DC, these are</p>
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<p>1 Q. Is this Joe McConnell?</p> <p>2 A. Yes, it's Joe McConnell -- on 3 a couple of occasions to see what was 4 actually going on because I was getting 5 the runaround as far as asking questions, 6 and nobody seemed to know as far as my 7 paperwork being processed and stuff, so I 8 knew that Joe -- I knew that Joe was 9 coming from Birmingham to Montgomery kind 10 of -- until the transition with Kent took 11 place.</p> <p>12 Q. Yes.</p> <p>13 A. And I knew he was the go-to 14 man, so that's the reason why I was 15 calling him.</p> <p>16 Q. All right. And then 17 underneath the sticker we have in 18 brackets 24 January?</p> <p>19 A. Right.</p> <p>20 Q. What was the significance of 21 that?</p> <p>22 A. Actually that may be the date 23 the session was held on. If not, I</p>	<p>1 actually the -- the first and last 2 initials of a recruiter for FedEx, and 3 this -- I believe this may have been his 4 cell number or a number that I could 5 locate him because he had called and 6 wanted to talk to me and left his number.</p> <p>7 Kelly Womble --</p> <p>8 Q. When was that?</p> <p>9 A. That was -- that was after 10 May. Because that's when they were 11 asking me about going to Anniston, and 12 that was just -- there was no way that 13 was feasible, so I turned around and I 14 called the terminal manager in Anniston.</p> <p>15 Q. Kelly Womble?</p> <p>16 A. No, Tony DeRosa.</p> <p>17 Q. Okay.</p> <p>18 A. And --</p> <p>19 Q. 256 looks like that might be 20 an exchange over there.</p> <p>21 A. And Tony didn't have a clue to 22 what I was even saying. He said that 23 will never happen, Charlie. The route</p>

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<p>1 that they are offering you, I already 2 have a guy trained. As a matter of fact, 3 that guy that was training for that 4 particular route was the one who wound up 5 purchasing my truck. But they were 6 saying, oh, we've got one in Anniston, 7 but it just wasn't feasible.</p> <p>8 Q. Okay. So, your point is that 9 you had talked to Tony DeRosa who told -- 10 what about -- who is Kelly Womble?</p> <p>11 A. She's a lady that worked in 12 his office, that answered the phone that 13 day.</p> <p>14 Q. Okay. So, when you talked to 15 Tony, you just had the conversation you 16 just described?</p> <p>17 A. Right.</p> <p>18 Q. Where he said, no, in fact, 19 there wasn't an opportunity there or --</p> <p>20 A. Exactly right. He said there 21 was no opportunity there. He didn't know 22 what -- he didn't even know why they was 23 even approaching me with that</p>	<p>1 doing the one in the evenings, and this 2 is some notes I wrote down, MVR, DOT 3 background check, Tuesday through 4 Saturday, which was the schedule that you 5 worked. Home delivery. Peak -- they 6 spoke about the peak season, holiday, 7 home base. They said 60 to 65 a year and 8 over.</p> <p>9 When I went into the meeting, 10 and there is a tape on this, I asked them 11 specifically about routes. Darrell 12 Clark, his reply to me -- and if they had 13 any contractors that were waiting. He 14 said, yes, we have an individual waiting, 15 but this individual is very picky in what 16 he is wanting, and I knew all along that 17 they was -- they probably were talking 18 about me.</p> <p>19 Q. So, where did this meeting 20 take place?</p> <p>21 A. At the Holiday Inn.</p> <p>22 Q. So, you went to the advertised 23 informational session like the one you</p>
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<p>1 opportunity, that there was no 2 opportunity.</p> <p>3 Q. All right. But in any event, 4 you said that was not practical for you 5 to have a route in Anniston?</p> <p>6 A. Not living in Elmore County.</p> <p>7 Q. All right. Well, let's -- 8 let's -- let's look at this next -- this 9 is a one, two, three, four --</p> <p>10 MR. NELMS: Is that original?</p> <p>11 MR. SPOTSWOOD: Yeah.</p> <p>12 A. Oh, the name of that 13 individual, Joe -- I'm sorry. Bob.</p> <p>14 Q. Yes.</p> <p>15 A. DC, it was Darrell Clark.</p> <p>16 Q. Darrell Clark, okay.</p> <p>17 A. Darrell Clark.</p> <p>18 Q. What are you looking at there 19 that answered that question for us?</p> <p>20 A. Well, this is looking at -- 21 this was a meeting that FedEx had on 22 6/14/05, and it was held by Tricia Jones 23 and Darrell Clark, and I believe Kent was</p>	<p>1 had attended for Stan?</p> <p>2 A. Yes, I did.</p> <p>3 Q. And this is obviously after 4 you had filed your lawsuit. And I take 5 it Darrell Clark had no clue who you 6 were?</p> <p>7 A. No, sir, he did not.</p> <p>8 MR. NELMS: By the way, just 9 for the record, he didn't do this per my 10 instructions.</p> <p>11 Q. How many people were at this 12 meeting?</p> <p>13 A. Probably half a dozen.</p> <p>14 Q. Okay. If I heard your 15 testimony correctly, they said that there 16 was a person kind of in line, but that 17 person was very picky, and you figured 18 they were talking about you?</p> <p>19 A. I assumed they were, they were 20 talking about me. They said they had a 21 gentleman.</p> <p>22 Q. So, what is the significance 23 of 60- to 65-year and over? What does</p>

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1 that mean?
2 A. Oh, 60 to 65,000 and over
3 income.
4 Q. I see. As opposed to, you
5 know, before expenses?
6 A. Oh, they didn't say that.
7 Q. But that would be consistent
8 with what you wrote down from the first
9 meeting, 50 to 75, less expenses.
10 A. Yeah, that's right.
11 Q. Isn't that what Stan had told
12 you?
13 A. Yeah, he said 50 to 75 a year
14 income. He didn't say less expenses.
15 Q. All right.
16 A. Expenses -- but, yeah.
17 Q. All right. And then was it
18 your -- your note here says peak season,
19 holiday, home base. What's the
20 significance of that comment?
21 A. It was just -- there was no
22 significance. They were going over the
23 peak season of the year, which is during

1 A. -- when I went in.
2 Q. Anything else on those yellow
3 sheets --
4 A. No, sir.
5 Q. -- or is that unrelated to the
6 litigation or your communications with
7 anybody at FedEx?
8 A. No.
9 MR. NELMS: Off the record.
10 (Off-the-record discussion.)
11 (Whereupon, Defendant's
12 Exhibit Y was marked for
13 identification.)
14 Q. (BY MR. SPOTSWOOD:) Yeah, let
15 me -- this is -- it says Iraq and then it
16 says career?
17 A. Well, I had a son that was
18 over there in Iraq fighting.
19 Q. Right.
20 A. And that was a -- actually
21 that has to do with some kind of access
22 number that I had to use to be able to
23 call him.

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1 the holidays.
2 Q. During the Christmastime?
3 A. Right.
4 Q. And home base, what was that a
5 reference to?
6 A. Just home terminal, in the
7 area that you lived.
8 Q. Okay. And what we've been
9 talking about are the notes reflected on
10 Defendant's Exhibit X here, correct?
11 A. Correct.
12 (Whereupon, Defendant's
13 Exhibit X was marked for
14 identification.)
15 Q. Was there some sort of a
16 sign-up sheet at these meetings?
17 A. No, sir.
18 Q. So, if somebody wasn't
19 interested, they didn't have to leave any
20 indication of having attended?
21 A. It was not -- I did not see a
22 sign-up sheet --
23 Q. Okay.

1 Q. Okay.
2 A. So, I mean, you know, I'm just
3 doing some doodling because he would
4 e-mail me, and I would write stuff down.
5 Q. All right.
6 MR. NELMS: Keep that.
7 A. Yeah, I'm going to.
8 MR. NELMS: Put it in your
9 pocket.
10 Q. Defendant's Exhibit Y here,
11 these are your notes, correct?
12 A. Yes, sir.
13 Q. And it says job apps at the
14 top, 6/13. It lists several items.
15 What's the significance of this? Are
16 these places that you were looking for a
17 job?
18 A. Yeah, I had contacted some of
19 these people. I had contacted Dixie
20 Homecrafters because I knew this guy
21 there. Friendly Ford. You know,
22 Wal-Mart in Prattville, I don't know what
23 that really is, if it was a contact.

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